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Vernon's
TEXAS CODES
ANNOTATED

Volume 2

ELECTION CODE

Sections 141.001 to End

2002

Cumulative Annual Pocket Part

Replacing 2001 pocket part supplementing 1986 main volume

For Use In 2001–2002

Includes
Laws through the 2001 Regular Session
of the 77th Legislature
Court Constructions through 47 S.W.3d 850



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PREFACE

These 2002 Cumulative Annual Pocket Parts and Supplementary Pamphlets contain the text of laws of a general and permanent nature, through the 2001 Regular Session of the 77th Legislature, as well as the annotative material pertaining thereto.

The laws herein are classified to Vernon's Texas Codes Annotated. Citations following the statutes to the General and Special Laws of Texas prior to 1984 contain references to the page on which the section cited or the entire Act is found. Beginning in 1984, and for all years thereafter, the citations do not contain page references.

Under the same classification will be found the annotations from the decisions of State and Federal courts construing the laws.

The annotations close with cases published as of August 11, 2001, reported in:

South Western Reporter, Third Series	47 S.W.3d 850
Texas Reports	163 T. (discontinued)
Texas Criminal Reports	172 Cr.R. (discontinued)
Supreme Court Reporter	121 S.Ct. 2629
United States Reports	531 U.S. (part)
Lawyers' Edition, Second Series	150 L.Ed.2d (part)
Federal Reporter, Third Series	254 F.3d 1086
Federal Supplement, Second Series	147 F.Supp.2d 949
Federal Rules Decisions	201 F.R.D. 105
Bankruptcy Reporter	264 B.R. 53
Federal Claims Reporter	49 Fed.Cl. 733
Opinions of Attorney General	Op.Atty.Gen.2001, No. JC-0392
Other Standard Reports	

For subsequent judicial constructions, pending the publication of the next supplementary service, weekly Advance Sheets of the Reporters listed above.

Library References to pertinent Key Numbers of Digests in the American Digest System and to sections in Corpus Juris Secundum are included in the pocket parts as an additional and convenient aid to research.

Later laws and annotations will be cumulated in subsequent pamphlets and annual pocket parts. For advance copies of laws enacted at subsequent sessions of the Legislature, see the Vernon's Texas Session Law Service or TX-LEGIS database on WESTLAW.

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ABBREVIATIONS

A.B.A.J.	American Bar Association Journal
A.L.R.	American Law Reports
A.L.R.2d	American Law Reports, Second Series
A.L.R.3d	American Law Reports, Third Series
A.L.R.4th	American Law Reports, Fourth Series
A.L.R.5th	American Law Reports, Fifth Series
A.L.R.Fed.	American Law Reports, Federal
App.	Appendix or Court of Appeals
App.C.C.	Decisions in Civil Causes in the Court of Appeals
art.	Article
B.R.	Bankruptcy Reporter
Baylor L.Rev.	Baylor Law Review
Bkrty.	United States Bankruptcy Court
C.A.	United States Court of Appeals
C.C.P.	Code of Criminal Procedure
C.J.S.	Corpus Juris Secundum
C.S.	Called Session of Legislature
ch.	Chapter of Act
Civ.App.	Court of Civil Appeals or Civil Appeals Reports
Civ.St.	Civil Statutes
cl.	Clause
Com.App.	Commission of Appeals
Cons.Fin.L.Q.Rep.	Consumer Finance Law Quarterly Report
Const.	Constitution
Corp. Counsel Rev.	Corporate Counsel Review
Cr.R.	Criminal Reports
eff.	Effective
F.	Federal Reporter
F.2d	Federal Reporter, Second Series
F.3d	Federal Reporter, Third Series
F.R.D.	Federal Rules Decisions
F.Supp.	Federal Supplement
F.Supp.2d	Federal Supplement, Second Series
Fed.Cl.	Federal Claims Reporter
G.L.	Gammel's Laws
Hous.L.Rev.	Houston Law Review
Hous.Law.	The Houston Lawyer
☞ (Key Number)	State Digest and other units of the American Digest System
L.Ed.	Lawyers' Edition
L.Ed.2d	Lawyers' Edition, Second Series
Leg.	Legislature
No.	Number
O. & W.	Oldham and White's Digest
Op.Atty.Gen.	Opinions of the Attorney General
P.D.	Paschal's Digest
PEB	Permanent Editorial Board for the Uniform Commercial Code

ABBREVIATIONS

P.L.-----	Public Law
par.-----	Paragraph
ref. n.r.e.-----	Writ of error refused, no reversible error
ref. w.m.-----	Writ of error refused for want of merit
R.App.Proc.-----	Rules of Appellate Procedure
R.Crim.Evidence-----	Rules of Criminal Evidence
Rev.Civ.St.-----	Revised Civil Statutes
Rev.P.C.-----	Revised Penal Code
S.Ct.-----	Supreme Court Reporter
S.W.-----	Southwestern Reporter
S.W.2d-----	Southwestern Reporter, Second Series
S.W.3d-----	Southwestern Reporter, Third Series
Sec.-----	Section of the Act
SMU L.Rev.-----	Southern Methodist University Law Review
South Texas L.J.-----	South Texas Law Journal
S.Tex.L.Rev.-----	South Texas Law Review
Sw.L.J.-----	Southwestern Law Journal
St.Mary's L.J.-----	St. Mary's Law Journal
subd.-----	Subdivision
subsec.-----	Subsection
T.-----	Texas Reports
TAC-----	Texas Administrative Code
Tex.B.J.-----	Texas Bar Journal
Tex.L.Rev.-----	Texas Law Review
Tex.Tech L.Rev.-----	Texas Tech Law Review
T. Marshall L.Rev.-----	Thurgood Marshall Law Review
U.L.A.-----	Uniform Laws Annotated
U.S.-----	United States Reports
U.S.C.A.-----	United States Code Annotated
V.A.T.S.-----	Vernon's Annotated Texas Statutes
V.T.C.A.-----	Vernon's Texas Codes Annotated
Vernon's Ann.C.C.P.-----	Vernon's Annotated Code of Criminal Procedure
Vernon's Ann.Civ.St.-----	Vernon's Annotated Civil Statutes
Vernon's Ann.Rules	
Civ.Evidence-----	Vernon's Annotated Rules of Civil Evidence
Vernon's Ann.Rules	
Civ.Proc.-----	Vernon's Annotated Rules of Civil Procedure
Vernon's Ann.Rules	
of Evidence-----	Vernon's Annotated Rules of Evidence

EFFECTIVE DATES

The following table shows the date of adjournment and the effective date of ninety day bills enacted at sessions of the legislature beginning with the year 1945:

Year	Leg.	Session	Adjournment Date	Effective Date
1945	49	Regular	June 5, 1945	September 4, 1945
1947	50	Regular	June 6, 1947	September 5, 1947
1949	51	Regular	June 6, 1949	September 5, 1949
1951	52	Regular	June 8, 1951	September 7, 1951
1953	53	Regular	May 27, 1953	August 26, 1953
1954	53	1st C.S.	May 13, 1954	August 12, 1954
1955	54	Regular	June 7, 1955	September 6, 1955
1957	55	Regular	May 23, 1957	August 22, 1957
1957	55	1st C.S.	November 12, 1957	February 11, 1958
1957	55	2nd C.S.	December 3, 1957	March 4, 1958
1959	56	Regular	May 12, 1959	August 11, 1959
1959	56	1st C.S.	June 16, 1959	September 15, 1959
1959	56	2nd C.S.	July 16, 1959	October 15, 1959
1959	56	3rd C.S.	August 6, 1959	November 5, 1959
1961	57	Regular	May 29, 1961	August 28, 1961
1961	57	1st C.S.	August 8, 1961	November 7, 1961
1961	57	2nd C.S.	August 14, 1961	November 13, 1961
1962	57	3rd C.S.	February 1, 1962	May 3, 1962
1963	58	Regular	May 24, 1963	August 23, 1963
1965	59	Regular	May 31, 1965	August 30, 1965
1966	59	1st C.S.	February 23, 1966	*
1967	60	Regular	May 29, 1967	August 28, 1967
1968	60	1st C.S.	July 3, 1968	*
1969	61	Regular	June 2, 1969	September 1, 1969
1969	61	1st C.S.	August 26, 1969	*
1969	61	2nd C.S.	September 9, 1969	December 9, 1969
1971	62	Regular	May 31, 1971	August 30, 1971
1971	62	1st C.S.	June 4, 1971	September 3, 1971
1972	62	2nd C.S.	March 30, 1972	June 29, 1972
1972	62	3rd C.S.	July 7, 1972	*
1972	62	4th C.S.	October 17, 1972	January 16, 1973
1973	63	Regular	May 28, 1973	August 27, 1973
1973	63	1st C.S.	December 20, 1973	*
1975	64	Regular	June 2, 1975	September 1, 1975
1977	65	Regular	May 30, 1977	August 29, 1977
1977	65	1st C.S.	July 21, 1977	*
1978	65	2nd C.S.	August 8, 1978	November 7, 1978
1979	66	Regular	May 28, 1979	August 27, 1979
1981	67	Regular	June 1, 1981	August 31, 1981
1981	67	1st C.S.	August 11, 1981	November 10, 1981
1982	67	2nd C.S.	May 28, 1982	*
1982	67	3rd C.S.	September 9, 1982	*
1983	68	Regular	May 30, 1983	August 29, 1983
1983	68	1st C.S.	June 25, 1983	September 23, 1983

EFFECTIVE DATES

Year	Leg.	Session	Adjournment Date	Effective Date
1984	68	2nd C.S.	July 3, 1984	October 2, 1984
1985	69	Regular	May 27, 1985	August 26, 1985
1985	69	1st C.S.	May 30, 1985	August 29, 1985
1986	69	2nd C.S.	September 4, 1986	December 4, 1986
1986	69	3rd C.S.	September 30, 1986	December 30, 1986
1987	70	Regular	June 1, 1987	August 31, 1987
1987	70	1st C.S.	June 3, 1987	September 2, 1987
1987	70	2nd C.S.	July 21, 1987	October 20, 1987
1989	71	Regular	May 29, 1989	August 28, 1989
1989	71	1st C.S.	July 19, 1989	October 18, 1989
1989	71	2nd C.S.	December 12, 1989	*
1990	71	3rd C.S.	March 28, 1990	*
1990	71	4th C.S.	May 1, 1990	*
1990	71	5th C.S.	May 30, 1990	*
1990	71	6th C.S.	June 7, 1990	September 6, 1990
1991	72	Regular	May 27, 1991	August 26, 1991
1991	72	1st C.S.	August 13, 1991	November 12, 1991
1991	72	2nd C.S.	August 25, 1991	November 24, 1991
1992	72	3rd C.S.	January 8, 1992	April 8, 1992
1993	73	Regular	May 31, 1993	August 30, 1993
1995	74	Regular	May 29, 1995	August 28, 1995
1997	75	Regular	June 2, 1997	September 1, 1997
1999	76	Regular	May 31, 1999	August 30, 1999
2001	77	Regular	May 28, 2001	August 27, 2001

* No legislation for which the ninety day effective date is applicable.

CITE THIS BOOK

Thus: V.T.C.A., Election Code § —

*

ELECTION CODE

TITLE 2. VOTER QUALIFICATIONS AND REGISTRATION

20. Voter Registration Agencies.

TITLE 7. EARLY VOTING

SUBTITLE B. SPECIAL FORMS OF EARLY VOTING

Chapter

105. Voting by Military Personnel.

TITLE 15. REGULATING POLITICAL FUNDS AND CAMPAIGNS

251. General Provisions.

252. Campaign Treasurer.

253. Restrictions on Contributions and Expenditures.

254. Political Reporting.

255. Regulating Political Advertising and Campaign Communications.

256. Citizen Complaint. [Repealed]

257. Political Parties.

258. Fair Campaign Practices.

TITLE 9. CANDIDATES

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CHAPTER 141. CANDIDACY FOR PUBLIC OFFICE GENERALLY

SUBCHAPTER B. APPLICATION FOR PLACE ON BALLOT

Section

- 141.031. General Requirements for Application.
141.032. Review of Application; Notice to Candidate.
141.034. Limitation on Challenge of Application.
141.038. Refund of Filing Fee.

SUBCHAPTER C. PETITION

- 141.061. Applicability of Subchapter.

Section

- 141.063. Validity of Signature.
141.066. Signing More Than One Petition Prohibited.
141.067. Withdrawal of Signature.
141.069. Verifying Signatures by Statistical Sample.
141.070. Estimating Gubernatorial Vote for Territory With Changed Boundary.

Library References

Tex. Prac., County and Special District Law, ch. 11.

SUBCHAPTER A. ELIGIBILITY FOR PUBLIC OFFICE

§ 141.001. Eligibility Requirements for Public Office

Library References

Removal from office, in general, see Brooks, 35 Texas Practice § 7.21.

Candidate eligibility, see Brooks, 35 Texas Practice § 11.20.

General provisions, management of districts, see Brooks, 36 Texas Practice § 46.11.

United States Supreme Court

Elections, antifusion laws prohibiting multiple-party candidates, associational rights under the First and Fourteenth Amendments, see Timmons

v. Twin Cities Area New Party, U.S.Minn.1997, 117 S.Ct. 1364, 520 U.S. 351, 137 L.Ed.2d 589, on remand 117 F.3d 1423.

Notes of Decisions

2. Construction and application

One ineligible to hold an office cannot be candidate for that office. *Wentworth v. Meyer* (App. 4 Dist. 1992) 837 S.W.2d 148, mandamus conditionally granted, subsequent mandamus proceeding 839 S.W.2d 766.

Any constitutional or statutory provision that restricts right to hold public office is to be strictly construed in favor of eligibility. *Wentworth v. Meyer* (App. 4 Dist. 1992) 837 S.W.2d 148, mandamus conditionally granted, subsequent mandamus proceeding 839 S.W.2d 766.

If potential candidate does not meet requirements of Election Code, candidate is not eligible for office of alderman. *Op.Atty.Gen.* 1992, No. DM-89.

7. Residence in territory—In general

Candidate for office of county attorney did not meet residency requirements as would entitle him to be placed on ballot in democratic primary; although candidate stated his intention to reside in county during applicable period, candidate did not enter into any binding employment contract in that county, and did not reside in county for any extended period of time during applicable period. *State v. Fischer* (App. 13 Dist. 1989) 769 S.W.2d 619, writ dismissed w.o.j., rehearing of writ of error overruled.

District residency requirement of section 141.001(a)(5) of the Election Code conflicts with section 51.072 of the Water Code, and the latter supersedes the Election Code. *Op.Atty.Gen.*1988, No. JM-909.

A person who has not resided in a county for six months immediately prior to her appointment as county attorney is ineligible for that office. Should the commissioners court wish to confirm such a person in the office to which such original appointment was invalid, it may do so only by a formal

repetition of the appointment at such time as she is eligible for office. *Op.Atty.Gen.*2000, No. JC-0191.

9. — Temporary absence, residence in territory

Luna v. Blanton (Sup. 1972) 478 S.W.2d 76, [main volume] answer to certified question conformed to 476 S.W.2d 384.

10. — Determination of residence in territory

Residence, for purposes of determining eligibility as a candidate, need not be judicially determined but can be decided by chairperson of political party. *Nixon v. Slagle* (App. 12 Dist. 1994) 885 S.W.2d 658.

Public records conclusively established that state senator had established residency outside of territory from which office was elected and, thus, "Administrative Declaration of Ineligibility" was properly issued by chairman of political party where senator submitted both his application for voter registration and receipt issued by deputy registrar stating that senator had filed his application for voter registration in county outside of territory from which office was elected. *Nixon v. Slagle* (App. 12 Dist. 1994) 885 S.W.2d 658.

11. Felony convictions—In general

Candidate was entitled to mandamus relief compelling state party chairman to certify candidate's name for placement on primary election ballot, where chairman had improperly denied certification on grounds that candidate was a convicted felon. *LaRouche v. Hannah* (Sup. 1992) 822 S.W.2d 632.

13. Other eligibility requirements—In general

Lemons v. State (Civ.App. 1978) 570 S.W.2d 593, [main volume] dismissed, withdrawn, ref. n.r.e.

16. Remedies

Lemons v. State (Civ.App. 1978) 570 S.W.2d 593, [main volume] dismissed, withdrawn, ref. n.r.e.

The general remedy for the holding of public office by an ineligible person is a quo warranto proceeding. A public official's right to office is not ordinarily subject to collateral attack. The acts of

such a public official may be valid under the de facto officer doctrine. A de facto officer is entitled to compensation for services rendered, and accordingly the Motley County Attorney, whether qualified or not at the time of her appointment, is entitled to such compensation. Op.Atty.Gen.2000, No. JC-0191.

§ 141.002. Effect of Boundary Change on Residence Requirement for Precinct Office

Library References

Candidate eligibility, see Brooks, 35 Texas Practice § 11.20.

SUBCHAPTER B. APPLICATION FOR PLACE ON BALLOT

§ 141.031. General Requirements for Application

A candidate's application for a place on the ballot that is required by this code must:

- (1) be in writing;
- (2) be signed and sworn to by the candidate and indicate the date that the candidate swears to the application;
- (3) be timely filed with the appropriate authority; and
- (4) include:
 - (A) the candidate's name;
 - (B) the candidate's occupation;
 - (C) the office sought, including any place number or other distinguishing number;
 - (D) an indication of whether the office sought is to be filled for a full or unexpired term if the office sought and another office to be voted on have the same title but do not have place numbers or other distinguishing numbers;
 - (E) a statement that the candidate is a United States citizen;
 - (F) a statement that the candidate has not been determined mentally incompetent by a final judgment of a court;
 - (G) a statement that the candidate has not been finally convicted of a felony from which the candidate has not been pardoned or otherwise released from the resulting disabilities;
 - (H) the candidate's date of birth;
 - (I) the candidate's residence address or, if the residence has no address, the address at which the candidate receives mail and a concise description of the location of the candidate's residence;
 - (J) the candidate's length of continuous residence in the state and in the territory from which the office sought is elected as of the date the candidate swears to the application;
 - (K) the statement: "I, _____, of _____ County, Texas, being a candidate for the office of _____, swear that I will support and defend the constitution and laws of the United States and of the State of Texas"; and
 - (L) a statement that the candidate is aware of the nepotism law, Chapter 573, Government Code.

Amended by Acts 1987, 70th Leg., ch. 427, § 4, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 107, § 3A.03, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 76, § 5.95(26), eff. Sept. 1, 1995.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment added the requirement of a statement that the candidate is aware of the nepotism law.

Library References

Candidate eligibility, see Brooks, 35 Texas Practice § 11.20.

United States Supreme Court

Access to ballots by minor party candidates, minimum number of primary votes required, see

Munro v. Socialist Workers Party, U.S.Wash.1986, 107 S.Ct. 533, 479 U.S. 189, 93 L.Ed.2d 499.

Notes of Decisions

- Name 6
- Office sought 5
- Purpose 2.6
- Removal from ballot 8
- Support for party's nominees 7

1. Validity of prior laws

Socialist Workers Party v. Hill, C.A.5 (Tex.)1973, 483 F.2d 554, [main volume] rehearing denied 485 F.2d 688.

McCarthy v. Briscoe, W.D.Tex.1976, 418 F.Supp. 816, application denied 97 S.Ct. 9, 429 U.S. 1316, 50 L.Ed.2d 47, application denied 539 F.2d 1353, application granted 97 S.Ct. 10, 429 U.S. 1317, 50 L.Ed.2d 49, [main volume] affirmed 553 F.2d 1005, certiorari denied 98 S.Ct. 612, 434 U.S. 985, 54 L.Ed.2d 480.

2. In general

McCarthy v. Briscoe, W.D.Tex.1976, 418 F.Supp. 816, application denied 97 S.Ct. 9, 429 U.S. 1316, 50 L.Ed.2d 47, application denied 539 F.2d 1353, application granted 97 S.Ct. 10, 429 U.S. 1317, 50 L.Ed.2d 49, [main volume] affirmed 553 F.2d 1005, certiorari denied 98 S.Ct. 612, 434 U.S. 985, 54 L.Ed.2d 480.

Candidate for public office is primarily responsible and accountable for properly completing and timely filing a proper application for place on the ballot. Escobar v. Sutherland (App. 8 Dist. 1996) 917 S.W.2d 399.

For purposes of properly completing application for place on election ballot, signing of the application and swearing to support and defend Constitution and laws of United States and the State of Texas are both essential parts which are required to preserve and protect the electoral process. Escobar v. Sutherland (App. 8 Dist. 1996) 917 S.W.2d 399.

That an application for place on election ballot be signed and sworn to is mandatory, not directory. Escobar v. Sutherland (App. 8 Dist. 1996) 917 S.W.2d 399.

Sections of Texas Election Code dealing with candidacy for political office are mandatory and are to be strictly enforced. Escobar v. Sutherland (App. 8 Dist. 1996) 917 S.W.2d 399.

While county chair has initial responsibility of determining an individual's entitlement to a place on election ballot, it is the candidate who must insure that the application complies with established law; if candidate does not, he is at risk of having candidacy rejected, if not by the county chair, then by the courts. Escobar v. Sutherland (App. 8 Dist. 1996) 917 S.W.2d 399.

Compliance with statutory requirements for completing candidate's application rests primarily on shoulders of candidate. In re Gibson (App. 10 Dist. 1998) 960 S.W.2d 418.

Although county chair is charged with reviewing candidate's application for placement on ballot for public office within five days of filing of application, candidate, not county chair, must ensure that application strictly complies with state law. In re Gibson (App. 10 Dist. 1998) 960 S.W.2d 418.

2.6. Purpose

Purpose of statute setting forth county party chair's duties with regard to reviewing applications for a place on primary ballot is two-fold: to protect the candidate who files his application early during the filing period by according him an opportunity to cure any defect, and to protect candidate who files at last possible moment. Escobar v. Sutherland (App. 8 Dist. 1996) 917 S.W.2d 399.

4. Residence

Fact that petition for place on general primary election ballot for judicial position did not contain state of residence did not render petition invalid. Sears v. Strake (App. 1 Dist. 1988) 764 S.W.2d 805, motion to file mandamus overruled.

Statutory purpose in requiring each signatory on petition for place on ballot to list address and voter registration number is to allow verification, if desired. Strachan v. Lanier (App. 1 Dist. 1993) 867 S.W.2d 52, rehearing denied.

Absence of city and zip code designation, alone, does not invalidate signature on petition for place on ballot; court is to take into consideration entire petition in determining whether residence address information for signer is sufficient. *Strachan v. Lanier* (App. 1 Dist. 1993) 867 S.W.2d 52, rehearing denied.

5. Office sought

Application for place on general primary election ballot was not defective on ground that it did not say that office sought was that of "Judge, 338th District Court," but stated only that office sought was that of "338th District Court"; petitions signed by registered voters which accompanied application stated that office sought was that of "Judge, 338th Dist. Ct.," and secretary of political party executive committee was required to consider petitions as part of application. *Bacon v. Harris* County Republican Executive Committee (App. 14 Dist. 1988) 743 S.W.2d 369.

Petition for place on general primary election ballot for judicial position adequately identified office sought and state of residence; although office sought was identified as "JUSTICE" in prescribed space, office was further identified as "COURT OF APPEALS — 14th DISTRICT, PLACE 2." *Sears v. Strake* (App. 1 Dist. 1988) 764 S.W.2d 805, motion to file mandamus overruled.

Failure of judicial candidate to indicate on application that she intended to run as candidate in Democratic Party primary did not bar applicant's candidacy since attached application specifically stated that candidate was applying for place on Democratic Party general primary ballot and, when read together with petition, adequately identified primary election in which candidate sought to run. *Fitch v. Fourteenth Court of Appeals* (Sup. 1992) 834 S.W.2d 335, rehearing overruled.

§ 141.032. Review of Application; Notice to Candidate

(a) On the filing of an application for a place on the ballot, the authority with whom the application is filed shall review the application to determine whether it complies with the requirements as to form, content, and procedure that it must satisfy for the candidate's name to be placed on the ballot.

(b) Except as provided by Subsection (c), the review shall be completed not later than the fifth day after the date the application is received by the authority.

(c) If an application is accompanied by a petition, the petition is considered part of the application, and the review shall be completed as soon as practicable after the date the application is received by the authority. However, the petition is not considered part of the application for purposes of determining compliance with the requirements applicable to each document, and a deficiency in the requirements for one document may not be remedied by the contents of the other document.

(d) A determination under this section that an application complies with the applicable requirements does not preclude a subsequent determination that the application does not comply, subject to Section 141.034.

(e) If an application does not comply with the applicable requirements, the authority shall reject the application and immediately deliver to the candidate written notice of the reason for the rejection.

6. Name

Candidate's name on application matched candidate's name for petition for place on primary election ballot and thus, application was valid; petition stated that its purpose was to entitle "TERRY PROCTOR" to have name placed on ballot and application stated full name of candidate and that name appearing on ballot would be "TERRY PROCTOR." *Sears v. Strake* (App. 1 Dist. 1988) 764 S.W.2d 805, motion to file mandamus overruled.

7. Support for party's nominees

County chair of party did not have authority to reject request of rival candidate that he be placed on primary ballot, despite claim that the candidate had stated he was a follower of an individual who advocated the overthrow of a democratic form of government in the United States, on ground that the candidate would refuse to support party's nominees. *Witherspoon v. Pouland* (App. 5 Dist. 1990) 784 S.W.2d 951.

8. Removal from ballot

County party chair lacked authority to independently remove candidate's name from primary ballot after chair had complied with statutory obligation to certify the names to appear on ballot within ten days of the filing deadline for candidate applications; thus, his order to remove one candidate's name from ballot on basis that candidate's application for placement on ballot lacked signature, given after chair had delivered list of candidates to proper officials, was null and void and of no effect. *Escobar v. Sutherland* (App. 8 Dist. 1996) 917 S.W.2d 399.

Candidate who did not fully complete application to be placed on ballot prior to having it verified did not fully satisfy statutory requirements governing candidate's application, and, thus, writ of mandamus would be issued to remove candidate's name from ballot, where candidate did not fill in blanks for information such as his name, county of residence, and office he was running for on application. *In re Gibson* (App. 10 Dist. 1998) 960 S.W.2d 418.

(f) This section does not apply to a determination of a candidate's eligibility.

Amended by Acts 1993, 73rd Leg., ch. 728, § 54, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1349, § 51, eff. Sept. 1, 1997.

Notes of Decisions

Hearing 3
Mandamus 4
Notice 2

Escobar v. Sutherland (App. 8 Dist. 1996) 917 S.W.2d 399.

County party chair is authorized, after an application for a place on the ballot has been determined to comply with applicable requirements, to make a subsequent determination that the application does not comply. Escobar v. Sutherland (App. 8 Dist. 1996) 917 S.W.2d 399.

Section of Texas Election Code, pertaining to county chairperson's review of candidate's application to place name on primary ballot and to giving notice of application's noncompliance to the candidate, does not apply to a determination of eligibility. Escobar v. Sutherland (App. 8 Dist. 1996) 917 S.W.2d 399.

1. In general

Hall v. Baum (Sup. 1970) 452 S.W.2d 699, [main volume] appeal dismissed 90 S.Ct. 818, 397 U.S. 93, 25 L.Ed.2d 79.

While county chair has initial responsibility of determining an individual's entitlement to a place on election ballot, it is the candidate who must insure that the application complies with established law; if candidate does not, he is at risk of having candidacy rejected, if not by the county chair, then by the courts. Escobar v. Sutherland (App. 8 Dist. 1996) 917 S.W.2d 399.

County chair's duty under Texas Election Code to determine whether an application for a place on electoral ballot complies with requirements as to form, content, and procedure is ministerial in nature; chair has no discretion to accept any such application and later certify the corresponding name for placement on primary ballot if application fails to meet applicable statutory requirements, but must reject any application that does not comply with requirements and immediately deliver to the candidate written notice of reason for the rejection. Escobar v. Sutherland (App. 8 Dist. 1996) 917 S.W.2d 399.

County party chairperson failed in ministerial duty to timely review applications for places on primary ballot, where he did not notify director of elections department until thirty-one days after candidate submitted application that application was not signed by candidate and that candidate's name should therefore be removed from ballot; if chairperson had reviewed application as required within five days of its filing and had notified candidate of defect, candidate would have had six-week window of opportunity before voting began in which to seek relief via injunction or mandamus.

2. Notice

Although candidate did not receive written notice that his application to place his name on ballot was fatally defective, candidate's failure to receive notice did not affect invalidity of his application and did not entitle him to have name placed on ballot, as candidate did not file application until filing deadline and had no opportunity to amend or refile application once time for filing expired. Jaime v. Patlan (App. 4 Dist. 1986) 709 S.W.2d 334.

3. Hearing

Prospective candidate for office of justice of peace was not entitled to judicial hearing before her application was rejected by county party executive committee due to inadequate number of signatures from voters within precinct from which office sought would be elected. Elliott v. Veselka (App. 1 Dist. 1988) 743 S.W.2d 949.

4. Mandamus

Failure of election official to review applications and submit correct list of candidates to proper authorities will subject official to mandamus; Court of Appeals has mandamus power to direct official to correct his or her mistake, or failure to act, committed during pendency of his or her authority. Escobar v. Sutherland (App. 8 Dist. 1996) 917 S.W.2d 399.

§ 141.033. Filing Applications for More Than One Office Prohibited

Notes of Decisions

Conditional filing 2

on acceptance of his withdrawal as a candidate from place one, was precluded from doing so; plain language of this section indicated applications for places on ballot for two offices not permitted to be held by the same person were not permissible. Wallace v. Howell (Sup. 1986) 707 S.W.2d 876.

2. Conditional filing

Individual who filed application as a candidate for place three on the Supreme Court, conditioned

§ 141.034. Limitation on Challenge of Application

(a) An application for a place on the ballot may not be challenged for compliance with the applicable requirements as to form, content, and procedure after the day before the beginning of early voting by personal appearance for the election for which the application is made.

(b) This section does not apply to a determination of a candidate's eligibility.

Amended by Acts 1989, 71st Leg., ch. 2, § 7.07, eff. Aug. 28, 1989; Acts 1991, 72nd Leg., ch. 203, § 2.57; Acts 1991, 72nd Leg., ch. 554, § 28, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 728, § 55, eff. Sept. 1, 1993.

Historical and Statutory Notes

1991 Legislation

Section 3.01(b) of Acts 1991, 72nd Leg., ch. 203 provides:

"This Act does not take effect until it is approved or precleared under the federal Voting

Rights Act (42 U.S.C. Secs. 1971, 1973, et seq.). An objection to any provision of this Act interposed under the federal Voting Rights Act does not affect the validity of the remainder of this Act."

Notes of Decisions

Time for challenge 1

1. Time for challenge

Action challenging candidates' applications for office of constable in primary contest was moot, where relator first sought to invoke mandamus jurisdiction of the court on day before absentee balloting began and such balloting was in progress. *Smith v. Crawford* (App. 5 Dist. 1988) 747 S.W.2d 938.

Issue whether candidate for justice of peace was eligible to be placed on primary ballot because of irregularities in his applications was moot where absentee voting for primary had begun. *Law v. Johnson* (App. 14 Dist. 1992) 826 S.W.2d 794.

Contest as to candidacy of person must be dismissed as moot where contest cannot be tried and final decree issued in time for it to be complied

with by election officials. *Law v. Johnson* (App. 14 Dist. 1992) 826 S.W.2d 794.

Where contestant waited until after primary election to challenge as untimely applications for place on ballot, contest came too late, and trial court properly dismissed challenge as moot. *Nichols v. Swindle* (App. 11 Dist. 1992) 833 S.W.2d 641.

Under section of Texas Election Code, contestant may challenge an application for place on ballot based on noncompliance with applicable requirements as to form, content, and procedure up until the day before commencement of early voting; during application period, such a challenge period can be but is not necessarily required to be made to county chair, but once county chair's statutory duty to omit certain candidates' names from list of candidates terminates and the list of candidates is delivered to appropriate authority forum, challenge must be directed to a forum other than the county chair. *Escobar v. Sutherland* (App. 8 Dist. 1996) 917 S.W.2d 399.

§ 141.038. Refund of Filing Fee

(a) A filing fee paid in connection with a candidate's application for a place on the ballot shall be refunded to the candidate or to the candidate's estate, as appropriate, if before the date of the election for which the application is made:

(1) the candidate dies;

(2) the candidate is declared ineligible; or

(3) the candidate's application for a place on the ballot is determined not to comply with the requirements as to form, content, and procedure that it must satisfy for the candidate's name to be placed on the ballot.

(b) A claim for a refund of a filing fee must be presented to the authority with whom the candidate's application for a place on the ballot is filed.

(c) A filing fee may not be refunded except as provided by this section.

(d) The refunding of filing fees for home-rule city offices may be regulated by the city charter, and those regulations supersede this section to the extent of any conflict.

Amended by Acts 1989, 71st Leg., ch. 2, § 7.08, eff. Aug. 28, 1989; Acts 1997, 75th Leg., ch. 864, § 93, eff. Sept. 1, 1997.

Historical and Statutory Notes

1989 Legislation

The 1989 amendment to make technical corrections in subsec. (a) inserted ", content," following "requirements as to form".

SUBCHAPTER C. PETITION

§ 141.061. **Applicability of Subchapter**

This subchapter applies to each petition filed in connection with a candidate's application for a place on the ballot.

Amended by Acts 1987, 70th Leg., ch. 493, § 1, eff. Sept. 1, 1987.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment substituted "each" for "a" and deleted "under this code" following "petition filed".

§ 141.062. **Validity of Petition**

Notes of Decisions

Validity ½

½. **Validity**

Election Code §§ 141.062(a)(3), 141.063(2)(B) and 181.006(b)(1) requiring signatures on unrecognized political party petitions to be accompanied by signer's voter registration number for those signatures to be valid were not framed in least restrictive manner necessary to achieve legitimate interest of Texas in regulating access to ballot and violated rights of members of minority party under First and Fourteenth Amendments of United States Constitution. *Pilcher v. Rains*, W.D.Tex. 1988, 683 F.Supp. 1130, affirmed 853 F.2d 334.

1. In general

Statutory requirements concerning candidacy for public office are mandatory, and must be strictly construed to ensure compliance. *Bejarano v. Hunter* (App. 8 Dist. 1995) 899 S.W.2d 346.

City clerk lacked discretion to accept applications for candidacy for city office that did not fully comply with application requirements, and so was subject to mandamus for accepting insufficient application. *Bejarano v. Hunter* (App. 8 Dist. 1995) 899 S.W.2d 346.

2. Signatures

Relator was not entitled to have petition for place on general primary election ballot declared

invalid on basis that it did not contain enough valid signatures; relator argued that "in excess" of 82 signatures were defective but did not identify which signatures were defective. *Sears v. Strake* (App. 1 Dist. 1988) 764 S.W.2d 805, motion to file mandamus overruled.

Failure of voters to affix manual signature to or complete date on petition in support of candidate for judgeship precluded voters from being counted one of 250 needed to obtain position on ballot. *Shipley v. Harris County Democratic Executive Committee* (App. 1 Dist. 1990) 795 S.W.2d 766, motion to file mandamus granted, subsequent mandamus proceeding 795 S.W.2d 704.

Purported signatures validated by signers did not count toward requirement that candidate for judgeship produce a petition supporting candidacy signed by 250 voters. *Shipley v. Harris County Democratic Executive Committee* (App. 1 Dist. 1990) 795 S.W.2d 766, motion to file mandamus granted, subsequent mandamus proceeding 795 S.W.2d 704.

Purported signatures of voters which did not also include a city or zip code designation did not count toward requirement that a candidate for judgeship submit petition signed by 250 voters. *Shipley v. Harris County Democratic Executive Committee* (App. 1 Dist. 1990) 795 S.W.2d 766, motion to file mandamus granted, subsequent mandamus proceeding 795 S.W.2d 704.

§ 141.063. **Validity of Signature**

(a) A signature on a petition is valid if:

(1) except as otherwise provided by this code, the signer, at the time of signing, is a registered voter of the territory from which the office sought is elected or has been issued a registration certificate for a registration that will become effective in that territory on or before the date of the applicable election;

(2) the petition includes the following information with respect to each signer:

(A) the signer's residence address;

(B) the signer's date of birth and the signer's voter registration number and, if the territory from which signatures must be obtained is situated in more than one county, the county of registration;

- (C) the date of signing; and
- (D) the signer's printed name;

(3) the part of the petition in which the signature appears contains the affidavit required by Section 141.065;

(4) each statement that is required by this code to appear on each page of the petition appears, at the time of signing, on the page on which the signature is entered; and

(5) any other applicable requirements prescribed by this code for a signature's validity are complied with.

(b) The signature is the only information that is required to appear on the petition in the signer's own handwriting.

(c) The use of ditto marks or abbreviations does not invalidate a signature if the required information is reasonably ascertainable.

(d) The omission of the state from the signer's residence address does not invalidate a signature unless the political subdivision from which the signature is obtained is situated in more than one state. The omission of the zip code from the address does not invalidate a signature.

Amended by Acts 1997, 75th Leg., ch. 1349, § 52, eff. Sept. 1, 1997.

Notes of Decisions

Date of signing 7
Validity ½
Voter registration number 8

½. Validity

Texas Election Code's requirement that nominating petitions contain each signer's voter registration number created impermissible burden on ballot access by independent candidates. *Texas Independent Party v. Kirk*, C.A.5 (Tex.)1996, 84 F.3d 178.

Independent candidate had standing to challenge Texas Election Code's requirement that nominating petitions contain each signer's voter registration number. *Texas Independent Party v. Kirk*, C.A.5 (Tex.)1996, 84 F.3d 178.

Election Code §§ 141.062(a)(3), 141.063(2)(B) and 181.006(b)(1) requiring signatures on unrecognized political party petitions to be accompanied by signer's voter registration number for those signatures to be valid were not framed in least restrictive manner necessary to achieve legitimate interest of Texas in regulating access to ballot and violated rights of members of minority party under First and Fourteenth Amendments of United States Constitution. *Pilcher v. Rains*, W.D.Tex. 1988, 683 F.Supp. 1130, affirmed 853 F.2d 334.

1. In general

Implied finding that the candidate's petition for placement on ballot was inadequate was supported by exhibit demonstrating that less than 500 signatures on petition complied with requirements of this section and warranted permanent injunction and writ of mandamus prohibiting placement of candidate's name on ballot. *Lerma v. Ramon* (App. 13 Dist. 1988) 760 S.W.2d 727.

3. Address

Omission of signer's state of residence from petition for place on general primary election bal-

lot did not render their signatures invalid, where city, county, and zip code was included for each signature. *Cohen v. Strake* (App. 14 Dist. 1988) 743 S.W.2d 366.

Even broad interpretation of this section would not allow total omission of such information as voter's registration number, resident address, printed name, or signature on candidate's petition for office. *Lerma v. Ramon* (App. 13 Dist. 1988) 760 S.W.2d 727.

Application for place on primary election ballot was not invalid for failure of supporters signing application to indicate Texas was their state of residence, where that information was not specifically required by Secretary of State's prescribed form, and where Texas registration of signers could be established by street address, city, county, zip code and voter registration numbers, which were given. *Love v. Veselka* (App. 1 Dist. 1988) 764 S.W.2d 564.

Signatures on nominating petition which did not include both a city and zip code were invalid. *Dunn v. Slagle* (App. 14 Dist. 1990) 783 S.W.2d 953, motion to file mandamus granted, subsequent mandamus proceeding 795 S.W.2d 712, rehearing overruled.

4. Registration

Prospective candidate's application for place on ballot for party primary election, as candidate for office of justice of the peace, was properly rejected because application did not contain at least 250 signatures from voters within precinct from which office sought would be elected. *Elliott v. Veselka* (App. 1 Dist. 1988) 743 S.W.2d 949.

6. Mandamus

Factual problems in determining whether requisite number of signers of nominating petitions were registered voters, including whether some signers may have used variants of their names that would not be disclosed by simple comparison with

§ 141.063

Note 6

registration lists or gave incorrect voter registration numbers through clerical error, precluded grant on mandamus to remove candidate's name from primary ballot. *Brady v. Fourteenth Court of Appeals* (Sup. 1990) 795 S.W.2d 712, rehearing overruled.

Although appellate courts have no ability to resolve factual disputes in mandamus action, where petition is lacking on its face, Court of Appeals may issue mandamus ordering certifying official to reject would-be candidate's application. *Bejarano v. Hunter* (App. 8 Dist. 1995) 899 S.W.2d 346.

City clerk lacked discretion to accept applications for candidacy for city office that did not fully comply with application requirements, and so was subject to mandamus for accepting insufficient application. *Bejarano v. Hunter* (App. 8 Dist. 1995) 899 S.W.2d 346.

7. Date of signing

Petition accompanying judicial candidate's application to be placed on primary ballot contained requisite 250 voters' signatures, though three of voters indicated only date and month on which

CANDIDATES

Title 9

they signed petition and not date, month and year, where three challenged signatures were part of multipage document signed by 247 other voters, each of whom indicated that they had signed in 1986. *Leal v. Mather* (App. 14 Dist. 1986) 709 S.W.2d 269.

8. Voter registration number

Signatures on nominating petition that were of unregistered voters, that did not include voter registration number, or which included incorrect voter registration number were invalid. *Dunn v. Slagle* (App. 14 Dist. 1990) 783 S.W.2d 953, motion to file mandamus granted, subsequent mandamus proceeding 795 S.W.2d 712, rehearing overruled.

Constitutional issue as to whether requirement that correct voter registration numbers be listed with signatures on nominating petitions violated freedom of association guaranteed by the First and Fourteenth Amendments could not be resolved in mandamus proceeding to remove candidate's name from primary ballot. *Brady v. Fourteenth Court of Appeals* (Sup. 1990) 795 S.W.2d 712, rehearing overruled.

§ 141.065. Affidavit of Circulator

Notes of Decisions

1. Construction and application

This section's requirement that each part of petition for place on general primary election ballot include affidavit did not require each petition to

have affidavit on its face; candidate complied with requirement by signing affidavit at beginning and end of each collection of petitions. *Cohen v. Strake* (App. 14 Dist. 1988) 743 S.W.2d 366.

§ 141.066. Signing More Than One Petition Prohibited

(a) A person may not sign the petition of more than one candidate for the same office in the same election.

(b) The following statement must appear at the top of each page of a petition: "Signing the petition of more than one candidate for the same office in the same election is prohibited."

(c) A signature on a candidate's petition is invalid if the signer signed the petition subsequent to signing a petition of another candidate for the same office in the same election.

Amended by Acts 1997, 75th Leg., ch. 864, § 94, eff. Sept. 1, 1997.

§ 141.067. Withdrawal of Signature

(a) A signature may be withdrawn from a petition as provided by this section.

(b) To withdraw a signature, the signer must request that the signer's signature be withdrawn.

(c) To be effective, a withdrawal request must:

(1) be in writing and be signed and acknowledged by the signer of the petition; and

(2) be filed with the authority with whom the petition is required to be filed not later than the date the petition is received by the authority or the seventh day before the petition filing deadline, whichever is earlier.

(d) A withdrawal request filed by mail is considered to be filed at the time of its receipt by the appropriate authority.

(e) The signer must deliver a copy of the withdrawal request to the candidate when the request is filed.

(f) The filing of an effective withdrawal request nullifies the signature on the petition and places the signer in the same position as if the signer had not signed the petition.

(g) If the withdrawal of a signature reduces the number of signatures on the petition below the prescribed minimum for the petition to be valid, the authority with whom the request is filed shall notify the candidate immediately by telephone, telegram, or an equally or more expeditious method of the number of withdrawn signatures. Before the third day after the date the candidate receives the notice, the candidate's petition may be supplemented with signatures equal in number to the number of signatures withdrawn.

Amended by Acts 1997, 75th Leg., ch. 864, § 95, eff. Sept. 1, 1997.

§ 141.069. Verifying Signatures by Statistical Sample

If signatures on a petition that is required to contain more than 1,000 signatures are to be verified by the authority with whom the candidate's application is required to be filed, the authority may use as the basis for the verification any reasonable statistical sampling method that ensures an accuracy rate of at least 95 percent.

Amended by Acts 1987, 70th Leg., ch. 54, § 16(b), eff. Sept. 1, 1987; Acts 1997, 75th Leg., ch. 1349, § 53, eff. Sept. 1, 1997.

Historical and Statutory Notes

1987 Legislation

The 1987 amendatory act, to conform to and clarify the legislative intent of Acts 1985, 69th

Leg., ch. 895 [see italicized note, main volume], rewrote the second sentence, and repealed Acts 1985, 69th Leg., ch. 895.

Library References

Conduct of elections, ordering elections, see Brooks, 35 Texas Practice § 11.10.

Candidate eligibility, see Brooks, 35 Texas Practice § 11.20.

§ 141.070. Estimating Gubernatorial Vote for Territory With Changed Boundary

(a) If, since the most recent gubernatorial general election, a district or precinct from which an officer of the federal, state, or county government is elected is created or has had its boundary changed, the number of votes received in the district or precinct by a political party's gubernatorial candidate or by all the gubernatorial candidates shall be estimated, as provided by this section, for the purpose of computing the number of signatures required on a candidate's petition.

(b) The secretary of state, for a district, or the county clerk of the county in which the precinct is situated, for a precinct, shall estimate the applicable vote total on the request of:

- (1) a candidate affected by the creation or change; or
- (2) an authority with whom an affected candidate's application for a place on the ballot is required to be filed.

(c) Not later than the 30th day after the date the secretary of state or county clerk receives an estimate request, the secretary or clerk shall certify the secretary's or clerk's estimate in writing and deliver a copy of the certification to the candidate and to the authority with whom the candidate's application for a place on the ballot is required to be filed.

(d) If an estimate is not requested under Subsection (b), the authority with whom an affected candidate's application for a place on the ballot is required to be filed shall make the estimate before acting on a petition.

(e) If, before completing an estimate, the estimating authority determines that the total estimated vote will be large enough to make a computation of the number of signatures required to appear on the petition unnecessary, the authority may certify that fact in writing instead of completing the estimate.

(f) A candidate for an office that is affected by an estimate or by a determination made under Subsection (e) may challenge the accuracy of the estimate or determination by filing a petition, stating the ground of the challenge, in a district court having general jurisdiction in the territory involved. Review in the district court is by trial de novo, and the court's decision is not appealable.

Amended by Acts 1997, 75th Leg., ch. 864, § 96, eff. Sept. 1, 1997.

**CHAPTER 142. INDEPENDENT CANDIDATE IN GENERAL
ELECTION FOR STATE AND COUNTY OFFICERS**

<p>Section 142.0021. Filing Declarations of Intent for More Than One Office Prohibited. 142.003. Preservation of Declaration. 142.006. Regular Filing Deadline for Application.</p>	<p>Section 142.010. Certification of Candidates' Names for Placement on General Election Ballot.</p>
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Library References

Tex. Prac., County and Special District Law, ch. 11. Party nominations, see Brooks, 35 Texas Practice § 11.21.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

§ 142.002. Declaration of Intent Required

Notes of Decisions

Validity $\frac{1}{2}$

$\frac{1}{2}$. **Validity**

Requirement of Texas Election Code that candidate seeking place on general election ballot file declaration of intent to run for office by January 2

of the election year did not violate First or Fourteenth Amendment; there was little burden in requiring candidates to decide to run for office approximately seven months before general election and two months before primary, and state's important regulatory interests were sufficient to justify the requirement. Texas Independent Party v. Kirk, C.A.5 (Tex.)1996, 84 F.3d 178.

§ 142.0021. Filing Declarations of Intent for More Than One Office Prohibited

(a) A candidate may not file declarations of intent for two or more offices that:

- (1) are not permitted by law to be held by the same person; and
- (2) are to be voted on at one or more elections held on the same day.

(b) If a person files more than one declaration of intent in violation of this section, each declaration filed subsequent to the first one filed is invalid.

Added by Acts 1997, 75th Leg., ch. 1349, § 54, eff. Sept. 1, 1997.

§ 142.003. Preservation of Declaration

The authority with whom a declaration of intent is required to be filed shall preserve each declaration filed with the authority until the day after general election day.

Amended by Acts 1997, 75th Leg., ch. 864, § 97, eff. Sept. 1, 1997.

§ 142.004. Application Required

Notes of Decisions

2. In general

State is precluded from forcing an independent candidate to establish a political party to attain ballot position. McCarthy v. Briscoe, W.D.Tex. 1976, 418 F.Supp. 816, application denied 97 S.Ct.

9, 429 U.S. 1316, 50 L.Ed.2d 47, application denied 539 F.2d 1353, application granted 97 S.Ct. 10, 429 U.S. 1317, 50 L.Ed.2d 49, affirmed 553 F.2d 1005, certiorari denied 98 S.Ct. 612, 434 U.S. 985, 54 L.Ed.2d 480.

§ 142.006. Regular Filing Deadline for Application

(a) An application for a place on the ballot must be filed not later than 5 p.m. of the 30th day after runoff primary election day, except as provided by Section 202.007.

(b) An application filed by mail is considered to be filed at the time of its receipt by the appropriate authority.

Amended by Acts 1987, 70th Leg., ch. 472, § 39, eff. Sept. 1, 1987; Acts 1987, 70th Leg., ch. 490, § 1, eff. Sept. 1, 1987.

Historical and Statutory Notes

1987 Legislation

Acts 1987, 70th Leg., ch. 472, § 39 and Acts 1987, 70th Leg., ch. 490, § 1 both designated the

provision relating to filing time as subsec. (a) and added subsec. (b).

Notes of Decisions

Validity $\frac{1}{2}$

dates did not impose significant burden, and state's important regulatory interests were sufficient to justify the regulations. Texas Independent Party v. Kirk, C.A.5 (Tex.)1996, 84 F.3d 178.

½. Validity

May deadlines in Texas Election Code for filing petitions by minor party and independent candi-

§ 142.007. Number of Petition Signatures Required

Notes of Decisions

Validity $\frac{1}{2}$

dates did not impose significant burden, and state's important regulatory interests were sufficient to justify the regulations. Texas Independent Party v. Kirk, C.A.5 (Tex.)1996, 84 F.3d 178.

½. Validity

May deadlines in Texas Election Code for filing petitions by minor party and independent candi-

§ 142.010. Certification of Candidates' Names for Placement on General Election Ballot

(a) Except as provided by Subsection (c), the authority with whom applications for a place on the ballot are required to be filed shall certify in writing for placement on the general election ballot the name of each candidate who files with the authority a declaration of intent that complies with Section 142.002(b), if required, and an application that complies with Section 142.004(b).

(b) Not later than the 55th day before general election day, the certifying authority shall deliver the certification to the authority responsible for having the official ballot prepared in each county in which the candidate's name is to appear on the ballot.

(c) A candidate's name may not be certified:

(1) if, before delivering the certification, the certifying authority learns that the name is to be omitted from the ballot under Section 145.064; or

(2) for an office for which the candidate's declaration or application is invalid under Section 142.0021 or 141.033, as applicable.

Amended by Acts 1997, 75th Leg., ch. 1349, § 55, eff. Sept. 1, 1997.

CHAPTER 143. CANDIDATE FOR CITY OFFICE

Section

143.005. Application for Home-Rule City Office.

Section

143.008. Extended Filing Deadline for Certain Offices.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

§ 143.004. Application Required

Historical and Statutory Notes

1987 Legislation

Acts 1985, 69th Leg., ch. 559 [see italicized note, main volume] was repealed by Acts 1987, 70th Leg., ch. 54, § 11(b).

§ 143.005. Application for Home-Rule City Office

(a) A city charter may prescribe requirements in connection with a candidate's application for a place on the ballot for an office of a home-rule city.

(b) If a city charter prescribes the requirements that a candidate's application must satisfy for the candidate's name to be placed on the ballot, Section 141.031(4)(L) also applies to the application. The other provisions of Section 141.031 do not apply.

(c) If a city charter requires candidates to pay a filing fee, the amount of the fee and an alternative procedure to payment of the fee shall be prescribed by the charter or by ordinance under charter authorization. However, if an ordinance prescribing an alternative procedure to payment of a filing fee is adopted before the effective date of this code without charter authorization, the ordinance, as it exists on the effective date of this code, continues in effect until the adoption of a charter provision prescribing an alternative procedure or authorizing prescription of an alternative procedure by ordinance.

(d) For any petition required or authorized to be filed in connection with a candidate's application for a place on the ballot for an office of a home-rule city, the minimum number of signatures that must appear on the petition is the greater of:

(1) 25; or

(2) one-half of one percent of the total vote received in the territory from which the office is elected by all candidates for mayor in the most recent mayoral general election.

(e) If the city charter of a home-rule city with a population of more than 1.18 million that holds nonpartisan elections for its offices requires both a petition and a \$50 fee to be filed for a candidate's name to be placed on the ballot, those requirements supersede this section.

Amended by Acts 1987, 70th Leg., ch. 54, § 11(a), eff. Sept. 1, 1987; Acts 1987, 70th Leg., ch. 427, § 5, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 597, § 66, eff. Sept. 1, 1991; Acts 2001, 77th Leg., ch. 669, § 15, eff. Sept. 1, 2001.

§ 143.008. Extended Filing Deadline for Certain Offices

(a) This section applies only to an office with a four-year term.

(b) If at the deadline prescribed by Section 143.007 no candidate has filed an application for a place on the ballot for an office, the filing deadline for that office is extended to 5 p.m. of the 40th day before election day.

Added by Acts 1987, 70th Leg., ch. 133, § 1, eff. Sept. 1, 1987.

CHAPTER 144. CANDIDATE FOR OFFICE OF POLITICAL
SUBDIVISION OTHER THAN COUNTY OR CITY

Section

144.003. Application Required.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

§ 144.003. Application Required

(a) Except as otherwise provided by law, to be entitled to a place on the ballot, a candidate must make an application for a place on the ballot.

(b) If a law outside this code purports to prescribe the exclusive requirements that a candidate's application must satisfy for the candidate's name to be placed on the ballot, Section 141.031(4)(L) also applies to the application. The other provisions of Section 141.031 do not apply.

Amended by Acts 1987, 70th Leg., ch. 427, § 6, eff. Sept. 1, 1987.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment, in subsec. (b), substituted "purports to prescribe" for "prescribes"; inserted

"Section 141.031(4)(L) also applies to the application. The other provisions of"; and substituted "do" for "does".

CHAPTER 145. WITHDRAWAL, DEATH AND INELIGIBILITY OF CANDIDATE

SUBCHAPTER A. GENERAL PROVISIONS

Section

- 145.001. Method for Withdrawal as Candidate.
 - 145.003. Administrative Declaration of Ineligibility.
 - 145.005. Effect of Votes Cast for Deceased or Ineligible Candidate.
 - 145.006. Ineligibility Deadline Extended by Weekend or Holiday.
- [Sections 145.007 to 145.030 reserved for expansion]

Section

- 145.038. Failure of District Executive Committee to Make Replacement Nomination.

SUBCHAPTER C. INDEPENDENT CANDIDATE IN GENERAL ELECTION FOR STATE AND COUNTY OFFICERS

- 145.064. Withdrawn, Deceased, or Ineligible Candidate's Name Omitted From Ballot.

SUBCHAPTER B. PARTY NOMINEE IN GENERAL ELECTION FOR STATE AND COUNTY OFFICERS

- 145.034. Copy of Withdrawal Request Delivered to Executive Committee.
- 145.036. Filling Vacancy in Nomination.
- 145.037. Certification of Replacement Nominee for Placement on Ballot.

SUBCHAPTER D. CANDIDATE IN ELECTION OTHER THAN GENERAL ELECTION FOR STATE AND COUNTY OFFICERS

- 145.092. Deadline for Withdrawal.
- 145.094. Withdrawn, Deceased, or Ineligible Candidate's Name Omitted From Ballot.
- 145.096. Deceased or Ineligible Candidate's Name to Appear on Ballot.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

SUBCHAPTER A. GENERAL PROVISIONS

Library References

Party nominations, see Brooks, 35 Texas Practice § 11.21.

§ 145.001. Method for Withdrawal as Candidate

(a) To withdraw from an election, a candidate whose name is to appear on the ballot must request that the candidate's name be omitted from the ballot.

(b) To be effective, a withdrawal request must:

- (1) be in writing and be signed and acknowledged by the candidate; and
- (2) be timely filed with the appropriate authority as provided by this code.

(c) A withdrawal request filed by mail is considered to be filed at the time of its receipt by the appropriate authority.

(d) The time of a withdrawal is the time that an effective withdrawal request is filed.

(e) This section does not apply to a candidate for president or vice-president of the United States.

Amended by Acts 1997, 75th Leg., ch. 864, § 98, eff. Sept. 1, 1997.

Notes of Decisions

Signature and acknowledgment 2

where notification was neither signed nor acknowledged by senator. Nixon v. Slagle (App. 12 Dist. 1994) 885 S.W.2d 658.

2. Signature and acknowledgement

State senator's notification that he would resign from office was not a withdrawal of a candidate

§ 145.003. Administrative Declaration of Ineligibility

(a) Except for a judicial action in which a candidate's eligibility is in issue, a candidate may be declared ineligible only as provided by this section.

(b) A candidate in the general election for state and county officers may be declared ineligible before the 30th day preceding election day by:

(1) the party officer responsible for certifying the candidate's name for placement on the general election ballot, in the case of a candidate who is a political party's nominee; or

(2) the authority with whom the candidate's application for a place on the ballot is required to be filed, in the case of an independent candidate.

(c) A candidate in an election other than the general election for state and county officers may be declared ineligible before the beginning of early voting by personal appearance by the authority with whom an application for a place on the ballot for the office sought by the candidate is required to be filed.

(d) The presiding officer of the final canvassing authority for the office sought by a candidate may declare the candidate ineligible after the polls close on election day and, except as provided by Subsection (e), before a certificate of election is issued.

(e) In the case of a candidate for governor or lieutenant governor, a declaration of ineligibility by the final canvassing authority's presiding officer may not be made after the final canvass for that office is completed.

(f) A candidate may be declared ineligible only if:

(1) the information on the candidate's application for a place on the ballot indicates that the candidate is ineligible for the office; or

(2) facts indicating that the candidate is ineligible are conclusively established by another public record.

(g) When presented with an application for a place on the ballot or another public record containing information pertinent to a candidate's eligibility, the appropriate authority shall promptly review the record. If the authority determines that the record establishes ineligibility as provided by Subsection (f), the authority shall declare the candidate ineligible.

(h) If a candidate is declared ineligible after the deadline for omitting an ineligible candidate's name from the ballot, the authority making the declaration shall promptly certify in writing the declaration of ineligibility to the canvassing authority for the election.

(i) If a candidate is declared ineligible, the authority making the declaration shall promptly give written notice of the declaration of ineligibility to the candidate.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.58; Acts 1991, 72nd Leg., ch. 554, § 29, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 728, § 56, eff. Sept. 1, 1993.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 141.034.

Notes of Decisions

Remedies 4

1. Construction and application

Performance by county party chair of his duties in enforcing laws of state and rules of party were subject to provisions of Election Code, including this section. *Witherspoon v. Pouland* (App. 5 Dist. 1990) 784 S.W.2d 951.

2. Power and authority of officials

For purposes of this section, the canvassing boards of each county and the county clerks were not the final canvassing authority; rather in county elections for district office, the final canvassing authority was State Board of Canvassers, whose presiding officer was the Secretary of State. *Hargett v. McDaniel* (App. 6 Dist. 1986) 717 S.W.2d 688.

Republican Party Chairman was required to reject application by candidate for Justice of Supreme Court for place on Republican primary election ballot, even though Chairman had previously determined that the application complied, where candidate was not qualified under Const. Art. 5, § 2 to hold the office of Justice of the Supreme Court. *Sears v. Bayoud* (Sup. 1990) 786 S.W.2d 248.

Question of fact existed regarding date on which candidate's application and payment of fees for reinstatement to active membership in state bar as required to practice law in state was received by bar, and thus, political party officer's determination of whether candidate had practiced law for four years so as to be eligible to run for office of county judge was not ministerial act and could not be compelled by writ of mandamus; although clerk's payment record indicated that candidate was reinstated to active rolls on particular date, candidate claimed that she mailed reinstatement request and fees months earlier. In *re Jones* (App. 7 Dist. 1998) 978 S.W.2d 648, application for mandamus filed.

That applicant voted in former precinct during time she claimed to be city resident did not conclusively establish that applicant was ineligible to be city council member for failing to meet 12-month city residency requirement, and thus city secretary exceeded her authority when she declared applicant ineligible on that basis, where voting laws permitted voter to cast ballot in former precinct. In *re Jackson* (App. 10 Dist. 2000) 14 S.W.3d 843.

3. Public records

Refusal of county party chair to place name of rival as candidate on primary ballot, because candidate was allegedly the follower of an individual who had advocated the overthrow of the democratic form of government in the United States, was not based upon public record as required by this section; decision had been based upon memorandum prepared at party chair's request, excerpt from biography of individual in question, and photocopy of newspaper article. *Witherspoon v. Pouland* (App. 5 Dist. 1990) 784 S.W.2d 951.

Political party chairman properly declared candidate for senate office ineligible where facts indicated that candidate was ineligible and such facts were established by public record. *Wentworth v. Meyer* (App. 4 Dist. 1992) 837 S.W.2d 148, mandamus conditionally granted, subsequent mandamus proceeding 839 S.W.2d 766.

Public records conclusively established that state senator had established residency outside of territory from which office was elected and, thus, "Administrative Declaration of Ineligibility" was properly issued by chairman of political party where senator submitted both his application for voter registration and receipt issued by deputy registrar stating that senator had filed his application for voter registration in county outside of territory from which office was elected. *Nixon v. Slagle* (App. 12 Dist. 1994) 885 S.W.2d 658.

Voting record showing that applicant for city council position voted in different precinct within 12 months of city council election was not public record that conclusively established applicant's ineligibility to be candidate for city council position for failing to meet 12-month city residency requirement. In *re Jackson* (App. 10 Dist. 2000) 14 S.W.3d 843.

City secretary may rely on a public record to administratively declare that a city council candidate is ineligible only when the record conclusively establishes the candidate's ineligibility. In *re Jackson* (App. 10 Dist. 2000) 14 S.W.3d 843.

4. Remedies

Factual disputes as to candidate's eligibility to be city council member must be resolved in accordance with statute providing harmed person with remedy of injunctive relief to prevent violations of Election Code, rather than in mandamus proceeding. In *re Jackson* (App. 10 Dist. 2000) 14 S.W.3d 843.

§ 145.005. Effect of Votes Cast for Deceased or Ineligible Candidate

(a) If the name of a deceased or ineligible candidate appears on the ballot under this chapter, the votes cast for the candidate shall be counted and entered on the official election returns in the same manner as for the other candidates.

(b) If the deceased or ineligible candidate receives the vote required for election, the resulting vacancy shall be filled in the regular manner.

(c) If the deceased or ineligible candidate and another candidate tie for the most votes in an election in which a plurality vote is sufficient for election, the other candidate is considered

§ 145.005

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to be elected. If more than one other candidate is tied with the deceased or ineligible candidate, the winner of the election shall be determined by resolving the tie between the other candidates in the regular manner for resolving a tie vote in the election.

(d) In a race in which a runoff is required, if the deceased or ineligible candidate received the vote that would entitle the candidate to a place on the runoff election ballot or tied for that number of votes, the candidates in the runoff shall be determined in the regular manner but without regard to the votes received by the deceased or ineligible candidate.

Amended by Acts 1997, 75th Leg., ch. 864, § 99, eff. Sept. 1, 1997.

Notes of Decisions

Write-in candidates 4

Rice v. English (App. 12 Dist. 1987) 742 S.W.2d 439, writ denied.

3. Vacancies

County judge was authorized to fill the two vacancies which occurred in office of county commissioner when incumbent commissioner died shortly before election in which he received votes necessary for reelection; judge could fill vacancy which occurred in commissioner's unexpired term on date of his death, and could fill vacancy which existed for future term beginning after election.

4. Write-in candidates

Home rule cities may require, by charter amendment or ordinance enacted under the charter, that write-in candidates file a declaration of write-in candidacy in order for such candidates to have votes cast for them counted. Election Law Opinion No. JH-1 (1991).

General law cities are not empowered to require that write-in candidates file declarations of write-in candidacy. Election Law Opinion No. JH-1 (1991).

§ 145.006. Ineligibility Deadline Extended by Weekend or Holiday

Section 1.006 applies to the last day on which a candidate may be declared ineligible to cause the candidate's name to be omitted from the ballot.

Added by Acts 1993, 73rd Leg., ch. 728, § 57, eff. Sept. 1, 1993.

[Sections 145.007 to 145.030 reserved for expansion]

SUBCHAPTER B. PARTY NOMINEE IN GENERAL ELECTION FOR STATE AND COUNTY OFFICERS

§ 145.034. Copy of Withdrawal Request Delivered to Executive Committee

At the same time a withdrawal request is filed, a candidate must deliver a copy of the request to the chair of the executive committee authorized to fill a vacancy in the nomination. If a vacancy exists in the office of chair of a precinct or district executive committee, the copy must be delivered to:

- (1) the chair of the state executive committee, for a district office; or
- (2) the chair of the county executive committee, for a precinct office.

Amended by Acts 1997, 75th Leg., ch. 864, § 100, eff. Sept. 1, 1997.

§ 145.035. Withdrawn, Deceased, or Ineligible Candidate's Name Omitted From Ballot

Notes of Decisions

In general 1

office appearing on the general election ballot where no one had filed for the office in the party's primary. Election Law Opinion No. GSB-3 (1990).

1. In general

This section did not allow a political party's executive committee to make a nomination for an

§ 145.036. Filling Vacancy in Nomination

(a) Except as provided by Subsection (b), if a candidate's name is to be omitted from the ballot under Section 145.035, the political party's state, district, county, or precinct executive

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Note 4

committee, as appropriate for the particular office, may nominate a replacement candidate to fill the vacancy in the nomination.

(b) An executive committee may make a replacement nomination following a withdrawal only if:

(1) the candidate:

(A) withdraws because of a catastrophic illness that was diagnosed after the 62nd day before general primary election day and the illness would permanently and continuously incapacitate the candidate and prevent the candidate from performing the duties of the office sought; and

(B) files with the withdrawal request a certificate describing the illness and signed by at least two licensed physicians;

(2) no political party that held primary elections has a nominee for the office sought by the withdrawing candidate as of the time of the withdrawal; or

(3) the candidate has been elected or appointed to fill a vacancy in another elective office or has become the nominee for another office.

(c) Under the circumstances described by Subsection (b)(2), the appropriate executive committee of each political party making nominations for the general election for state and county officers may make a replacement nomination for the office sought by the withdrawing candidate.

(d) For the purpose of filling a vacancy, a majority of the committee's membership constitutes a quorum. To be nominated, a person must receive a favorable vote of a majority of the members present.

(e) A vacancy in a nomination for a district, county, or precinct office that was made by primary election may not be filled before the beginning of the term of office of the county executive committee members elected in the year in which the vacancy occurs.

Amended by Acts 1987, 70th Leg., ch. 54, § 20, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 337, § 1, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 864, § 101, eff. Sept. 1, 1997.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment, to conform this section to Acts 1985, 69th Leg., 3rd C.S., ch. 14, substituted "62nd day" for "65th day" in subsec. (b)(1)(A) and inserted "or" at the end of subsec. (b)(1)(B).

1989 Legislation

The 1989 amendment added subd. (b)(3).

Library References

Party nominations, see Brooks, 35 Texas Practice § 11.21.

Notes of Decisions

Meetings 4

1. Construction and application

This section did not allow a political party's executive committee to make a nomination for an office appearing on the general election ballot where no one had filed for the office in the party's primary. Election Law Opinion No. GSB-3 (1990).

3. Time of filling vacancy

Withdrawal and replacement deadlines in Election Code are not intended to apply to unusual situations when there is no reasonable opportunity to comply with deadline. Slagle v. Hannah (Sup. 1992) 837 S.W.2d 100.

Secretary of State was required to accept political parties' certification of replacement nominees for position on ballot for office of State Board of Education, even though, technically, when one party's former candidate tendered his application to be placed on ballot for State Senate, his withdrawal from Board nomination was late and, therefore, void; federal court had deemed former candidate to have withdrawn and to have timely refiled for Senate, and at time of that withdrawal neither party had nominee for office of Board. Slagle v. Hannah (Sup. 1992) 837 S.W.2d 100.

4. Meetings

State Republican Executive Committee's act of selecting its nominee for Court of Appeals by telephone poll violated subsec. (d) of this section

requiring such nominees to be named at a meeting attended by a majority of the Committee's members present. State Democratic Executive Committee v. Rains (Sup. 1988) 758 S.W.2d 227.

§ 145.037. Certification of Replacement Nominee for Placement on Ballot

(a) For the name of a replacement nominee to be placed on the general election ballot, the chair of the executive committee making the replacement nomination must certify in writing the nominee's name for placement on the ballot as provided by this section.

(b) The certification must be signed and acknowledged by the chair.

(c) In addition to the name of the replacement nominee, the certification must include:

(1) the replacement nominee's residence address and mailing address, if different from the residence address;

(2) the name of the original nominee;

(3) the office sought, including any place number or other distinguishing number;

(4) the cause of the vacancy;

(5) an identification of the executive committee making the replacement nomination; and

(6) the date of the replacement nomination.

(d) The chair must deliver the certification to:

(1) the secretary of state, for a statewide or district office; or

(2) the authority responsible for having the official ballot prepared, for a county or precinct office.

(e) The certification must be delivered not later than 5 p.m. of the 60th day before election day.

(f) A certification of a replacement nominee that is delivered by mail is considered to be delivered at the time of its receipt by the appropriate authority.

(g) A replacement nominee's name may not be certified if, before delivering the certification, the certifying authority learns that the replacement nominee's name is to be omitted from the ballot under Section 145.035.

Amended by Acts 1997, 75th Leg., ch. 864, § 102, eff. Sept. 1, 1997.

Cross References

Financial statements, filing dates, see V.T.C.A., Government Code § 572.027.

Notes of Decisions

Time for application 3

3. Time for application

Withdrawal and replacement deadlines in Election Code are not intended to apply to unusual situations when there is no reasonable opportunity to comply with deadline. Slagle v. Hannah (Sup. 1992) 837 S.W.2d 100.

Secretary of State was required to accept political parties' certification of replacement nominees

for position on ballot for office of State Board of Education, even though, technically, when one party's former candidate tendered his application to be placed on ballot for State Senate, his withdrawal from Board nomination was late and, therefore, void; federal court had deemed former candidate to have withdrawn and to have timely refiled for Senate, and at time of that withdrawal neither party had nominee for office of Board. Slagle v. Hannah (Sup. 1992) 837 S.W.2d 100.

§ 145.038. Failure of District Executive Committee to Make Replacement Nomination

(a) If a political party's district executive committee fails to nominate a replacement candidate to fill a vacancy in a nomination for a district office, the state executive committee may nominate a candidate to fill the vacancy.

(b) The state chair must deliver the certification of the replacement nominee not later than 5 p.m. of the 57th day before election day.

(c) A certification of a replacement nominee that is delivered by mail is considered to be delivered at the time of its receipt by the secretary of state.

Amended by Acts 1997, 75th Leg., ch. 864, § 103, eff. Sept. 1, 1997.

Cross References

Financial statements, filing dates, see V.T.C.A.,
Government Code § 572.027.

**SUBCHAPTER C. INDEPENDENT CANDIDATE IN GENERAL
ELECTION FOR STATE AND COUNTY OFFICERS**

**§ 145.064. Withdrawn, Deceased, or Ineligible Candidate's Name Omitted
From Ballot**

(a) Except as provided by Subsection (b), a candidate's name shall be omitted from the ballot if the candidate withdraws, dies, or is declared ineligible on or before the 65th day before election day.

(b) The name of a deceased candidate may not be omitted if:

- (1) the decedent was the incumbent in the office for which the decedent was a candidate;
or
- (2) no other candidate's name is to appear on the ballot in the race in which the decedent was a candidate.

Amended by Acts 1997, 75th Leg., ch. 864, § 104, eff. Sept. 1, 1997.

**SUBCHAPTER D. CANDIDATE IN ELECTION OTHER THAN GENERAL
ELECTION FOR STATE AND COUNTY OFFICERS**

§ 145.092. Deadline for Withdrawal

(a) Except as otherwise provided by this section, a candidate may not withdraw from an election after 5 p.m. of the second day before the beginning of early voting by personal appearance.

(b) A candidate in an election for which the filing deadline for an application for a place on the ballot is not later than 5 p.m. of the 45th day before election day may not withdraw from the election after 5 p.m. of the 36th day before election day.

(c) A candidate in a runoff election following a main election subject to Subsection (a) may not withdraw from the election after 5 p.m. of the 10th day after the date of the main election or 5 p.m. of the second day before the beginning of early voting by personal appearance for the runoff, whichever is earlier.

(d) A candidate in a runoff election following a main election subject to Subsection (b) may not withdraw from the election after 5 p.m. of the third day after the date of the main election.

(e) Section 1.006 does not apply to this section.

Amended by Acts 1987, 70th Leg., ch. 472, § 40, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 203, § 2.59; Acts 1991, 72nd Leg., ch. 554, § 30, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991,
72nd Leg., ch. 203, see notes following § 141.034.

**§ 145.094. Withdrawn, Deceased, or Ineligible Candidate's Name Omitted
From Ballot**

(a) The name of a candidate shall be omitted from the ballot if the candidate:

(1) dies before the second day before the date of the deadline for filing the candidate's application for a place on the ballot;

(2) withdraws or is declared ineligible before 5 p.m. of the second day before the beginning of early voting by personal appearance, in an election subject to Section 145.092(a); or

(3) withdraws or is declared ineligible before 5 p.m. of the 36th day before election day, in an election subject to Section 145.092(b).

(b) This section does not apply to a runoff election.

Amended by Acts 1987, 70th Leg., ch. 472, § 41, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 203, § 2.60; Acts 1991, 72nd Leg., ch. 554, § 31, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see notes following § 141.034.

§ 145.096. Deceased or Ineligible Candidate's Name to Appear on Ballot

(a) Except as provided by Subsection (b), a candidate's name shall be placed on the ballot if the candidate:

(1) dies on or after the second day before the deadline for filing the candidate's application for a place on the ballot;

(2) is declared ineligible after 5 p.m. of the second day before the beginning of early voting by personal appearance, in an election subject to Section 145.092(a); or

(3) is declared ineligible after 5 p.m. of the 36th day before election day, in an election subject to Section 145.092(b).

(b) If a candidate in a runoff election dies or is declared ineligible before runoff election day, the candidate's name shall be placed on the runoff election ballot.

Amended by Acts 1987, 70th Leg., ch. 472, § 42, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 203, § 2.61; Acts 1991, 72nd Leg., ch. 554, § 32, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 141.034.

CHAPTER 146. WRITE-IN CANDIDATE

**SUBCHAPTER B. WRITE-IN CANDIDATE
IN GENERAL ELECTION FOR STATE
AND COUNTY OFFICERS**

		Section	
		146.052.	Declaration of Write-In Candidacy Required.
		146.053.	Authority With Whom Declaration Filed.
		146.054.	Filing Deadline.
		146.055.	Applicability of Other Code Provisions.
Section			
146.023.	Declaration of Write-In Candidacy Required.		
146.0231.	Filing Fee.		
146.0232.	Number of Petition Signatures Required.		
146.025.	Filing Period.		
146.029.	Certification of Candidate for Placement on List of Write-in Candidates.		
146.030.	Candidate Not Certified.		
146.0301.	Withdrawal as Write-In Candidate.	146.081.	Candidate's Name Required to Appear on List.
146.031.	List of Write-In Candidates.	146.082.	Declaration of Write-in Candidacy Required.

**SUBCHAPTER D. WRITE-IN CANDIDATE
IN SPECIAL ELECTION TO FILL
VACANCY IN LEGISLATURE**

**SUBCHAPTER C. WRITE-IN CANDIDATE
IN CITY ELECTION**

146.051.	Candidate's Name Required to Appear on List.	146.083.	Filing Deadline.
		146.084.	Applicability of Other Code Provisions.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

Library References

Conduct of elections, write-in voting, see Brooks,
35 Texas Practice § 11.15.

SUBCHAPTER A. WRITE-INS GENERALLY

§ 146.001. Write-In Votes Permitted

Notes of Decisions

Declaration of candidacy 2
Intent of voter 3

1. In general

Relator who had satisfied statutory requirements to become write-in candidate for office of county judge had standing to pursue mandamus action challenging eligibility of another candidate, even if relator became write-in candidate for purpose of bringing suit. In re Jones (App. 7 Dist. 1998) 978 S.W.2d 648, application for mandamus filed.

Relator who had satisfied statutory requirements to become write-in candidate for office of county judge had standing to pursue mandamus action challenging eligibility of another candidate, even if relator became write-in candidate for purpose of bringing suit. In re Jones (App. 7 Dist. 1998) 978 S.W.2d 648, application for mandamus filed.

2. Declaration of candidacy

Phrase "Except as otherwise provided by law" is not independent authority that allows a city to enact a declaration of write-in candidacy ordinance; a city may not adopt a declaration of write-in candidacy scheme unless authorized to do so by other state law. Election Law Opinion No. JH-1 (1991).

Home rule cities may require, by charter amendment or ordinance enacted under the charter, that write-in candidates file a declaration of write-in candidacy in order for such candidates to have votes cast for them counted. Election Law Opinion No. JH-1 (1991).

General law cities are not empowered to require that write-in candidates file declarations of write-in candidacy. Election Law Opinion No. JH-1 (1991).

3. Intent of voter

Ballots that had "Gus" "Garza," or "Gus Garza" either completely written or partly written on County Attorney's line were properly counted for write-in candidate named "Gustavo 'Gus' Garza," as voters' intent to vote for him was clearly ascertainable; evidence showed that three persons with surname "Garza" ran in election, that two of them had their names preprinted on ballot, that write-in candidate was only such candidate with surname "Garza," that he was called "Gus" and that no one else called "Gus" ran in election. Guerra v. Garza (App. 13 Dist. 1993) 865 S.W.2d 573, rehearing overruled, writ dismissed w.o.j.

Ballots that had surname "Garza" written anywhere on ballot other than County Attorney's line, and ballots that had "Gues," "Gue," initials "G.G.," "Gus Garcia," or "Mickey Mouse" even if written on County Attorney's line, were not properly counted for County Attorney write-in candidate named "Gustavo 'Gus' Garza"; voters' intent to vote for that candidate was not clearly ascertainable. Guerra v. Garza (App. 13 Dist. 1993) 865 S.W.2d 573, rehearing overruled, writ dismissed w.o.j.

Ballots that had overlapping pencil and pen marks in boxes indicating straight-party vote, and that also had write-in candidate's name written in pencil in write-in candidate's space, and "X" written in pencil in box for write-in candidate, were properly counted for that candidate. Guerra v. Garza (App. 13 Dist. 1993) 865 S.W.2d 573, rehearing overruled, writ dismissed w.o.j.

SUBCHAPTER B. WRITE-IN CANDIDATE IN GENERAL
ELECTION FOR STATE AND COUNTY OFFICERS

§ 146.022. Candidate's Name Required to Appear on List

Notes of Decisions

Validity 1

1. Validity

Statutes prohibiting counting of write-in votes for candidate who did not properly register with county judge 60 days before general election do

not interfere with voting franchise in violation of the State Constitution. Chavez v. Hannah (App. 3 Dist. 1992) 827 S.W.2d 100, writ denied.

Statutes prohibiting counting of write-in votes for any candidate who did not properly register with county judge 60 days before general election furthers important state interest and does not

§ 146.022

Note 1

violate due process guarantees of the State Constitution. *Chavez v. Hannah* (App. 3 Dist. 1992) 827 S.W.2d 100, writ denied.

CANDIDATES

Title 9

§ 146.023. Declaration of Write-In Candidacy Required

(a) To be entitled to a place on the list of write-in candidates, a candidate must make a declaration of write-in candidacy.

(b) A declaration of write-in candidacy must, in addition to satisfying the requirements prescribed by Section 141.031 for an application for a place on the ballot, be accompanied by the appropriate filing fee or, instead of the filing fee, a petition that satisfies the requirements prescribed by Subchapter C, Chapter 141.¹

(c) A candidate may not file a declaration of write-in candidacy for more than one office. If a person files more than one declaration of write-in candidacy in violation of this subsection, each declaration filed subsequent to the first one filed is invalid.

(d) A declaration of write-in candidacy is public information immediately on its filing.

Amended by Acts 1991, 72nd Leg., ch. 170, § 1, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 728, § 58, eff. Sept. 1, 1993.

¹ § 141.061 et seq.

Administrative Code References

Secretary of state's office, elections, declaration of write-in candidacy, see 1 TAC § 81.31.

Notes of Decisions

Validity 1/2

1/2. Validity

Statutes prohibiting counting of write-in votes for candidate who did not properly register with county judge 60 days before general election do not interfere with voting franchise in violation of

the State Constitution. *Chavez v. Hannah* (App. 3 Dist. 1992) 827 S.W.2d 100, writ denied.

Statutes prohibiting counting of write-in votes for any candidate who did not properly register with county judge 60 days before general election furthers important state interest and does not violate due process guarantees of the State Constitution. *Chavez v. Hannah* (App. 3 Dist. 1992) 827 S.W.2d 100, writ denied.

§ 146.0231. Filing Fee

(a) The filing fee for a write-in candidate is the amount prescribed by Section 172.024 for a candidate for nomination for the same office in a general primary election.

(b) A filing fee received by the secretary of state shall be deposited in the state treasury to the credit of the general revenue fund.

(c) A filing fee received by the county judge shall be deposited in the county treasury to the credit of the county general fund.

Added by Acts 1991, 72nd Leg., ch. 170, § 1, eff. Sept. 1, 1991.

§ 146.0232. Number of Petition Signatures Required

The minimum number of signatures that must appear on the petition authorized by Section 146.023(b) is the number prescribed by Section 172.025 to appear on a petition of a candidate for nomination for the same office in a general primary election.

Added by Acts 1991, 72nd Leg., ch. 170, § 1, eff. Sept. 1, 1991.

§ 146.025. Filing Period

(a) A declaration of write-in candidacy must be filed not later than 5 p.m. of the 60th day before general election day, except as otherwise provided by this code. A declaration may not be filed earlier than the 30th day before the date of the regular filing deadline.

(b) If a candidate whose name is to appear on the general election ballot dies or is declared ineligible after the third day before the date of the filing deadline prescribed by Subsection

(a), a declaration of write-in candidacy for the office sought by the deceased or ineligible candidate may be filed not later than 5 p.m. of the 57th day before election day.

(c) A declaration of write-in candidacy filed by mail is considered to be filed at the time of its receipt by the appropriate authority.

Amended by Acts 1987, 70th Leg., ch. 472, § 43, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 728, § 59, eff. Sept. 1, 1993.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment in subsec. (a) substituted "60th" for "55th", and in subsec. (b) substituted "57th" for "27th".

§ 146.029. Certification of Candidate for Placement on List of Write-in Candidates

(a) Except as provided by Section 146.030, the authority with whom a declaration of write-in candidacy is required to be filed shall certify in writing for placement on the list of write-in candidates the name of each candidate who files with the authority a declaration that complies with Section 146.023(b). If no name is to be certified, the authority shall certify that fact in writing.

(b) Each name shall be certified in the form indicated on the candidate's declaration of write-in candidacy, subject to Subchapter B, Chapter 52.

(c) Not later than the 55th day before election day, the certifying authority shall deliver the certification to the authority responsible for having the official ballot prepared in each county in which the office sought by the candidate is to be voted on.

Amended by Acts 1987, 70th Leg., ch. 472, § 43, eff. Sept. 1, 1987.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment in subsec. (a) required certification that no name is to be certified; in

subsec. (c) substituted "Not" for "Except as provided by Subsection (d), not" and "55th" for "45th"; and deleted subsec. (d).

§ 146.030. Candidate Not Certified

A write-in candidate may not be certified for placement on the list of write-in candidates if:

(1) the information on the candidate's declaration of write-in candidacy indicates that the candidate is ineligible for the office;

(2) facts indicating that the candidate is ineligible are conclusively established by another public record;

(3) the candidate is determined ineligible by a final judgment of a court;

(4) the candidate's declaration of write-in candidacy is invalid for the office under Section 146.023(e); or

(5) the certifying authority learns that the candidate's name is to be omitted from the list under Section 146.0301.

Amended by Acts 1993, 73rd Leg., ch. 728, § 60, eff. Sept. 1, 1993.

§ 146.0301. Withdrawal as Write-In Candidate

(a) A write-in candidate may not withdraw from the election after the 46th day before election day.

(b) To withdraw from the election, a write-in candidate must file a written withdrawal request, signed and acknowledged by the candidate, with the authority with whom the candidate's declaration of write-in candidacy is required to be filed.

(c) A withdrawal request filed by mail is considered to be filed at the time of its receipt by the appropriate authority.

(d) A candidate's name shall be omitted from the list of write-in candidates if the candidate withdraws on or before the 46th day before election day.

(e) Not later than the day after the date the withdrawal request is received, the appropriate authority shall deliver a written notice of the withdrawal of any candidate previously certified under Section 146.029 to the same authority to whom the certification was delivered. Added by Acts 1993, 73rd Leg., ch. 728, § 61, eff. Sept. 1, 1993.

§ 146.031. List of Write-In Candidates

(a) The authority responsible for having the official ballot prepared shall prepare a list containing the name of each write-in candidate certified to the authority. Each name must appear in the form in which it is certified.

(b) A write-in candidate's name may not appear more than once on the list.

(c) Copies of the list shall be distributed to the counting officers in the election for use in counting write-in votes.

(d) Copies of the list shall be distributed to each presiding election judge with the other election supplies. A copy of the list shall be posted in each polling place at each place where an instruction poster is required to be posted.

(e) The authority responsible for having the official ballot prepared shall retain a copy of the list and preserve it for the period for preserving the precinct election records.

Amended by Acts 1993, 73rd Leg., ch. 728, § 62, eff. Sept. 1, 1993.

Notes of Decisions

Validity 1

the State Constitution. *Chavez v. Hannah* (App. 3 Dist. 1992) 827 S.W.2d 100, writ denied.

1. Validity

Statutes prohibiting counting of write-in votes for candidate who did not properly register with county judge 60 days before general election do not interfere with voting franchise in violation of

Statutes prohibiting counting of write-in votes for any candidate who did not properly register with county judge 60 days before general election furthers important state interest and does not violate due process guarantees of the State Constitution. *Chavez v. Hannah* (App. 3 Dist. 1992) 827 S.W.2d 100, writ denied.

SUBCHAPTER C. WRITE-IN CANDIDATE IN CITY ELECTION

§ 146.051. Candidate's Name Required to Appear on List

In an election for city officers, a write-in vote may not be counted unless the name written in appears on the list of write-in candidates.

Added by Acts 1991, 72nd Leg., ch. 363, § 1, eff. Sept. 1, 1991. Amended by Acts 2001, 77th Leg., ch. 215, § 1, eff. Sept. 1, 2001.

§ 146.052. Declaration of Write-In Candidacy Required

To be entitled to a place on the list of write-in candidates, a candidate must make a declaration of write-in candidacy.

Added by Acts 1991, 72nd Leg., ch. 363, § 1, eff. Sept. 1, 1991.

§ 146.053. Authority With Whom Declaration Filed

A declaration of write-in candidacy must be filed with the authority with whom an application for a place on the ballot is required to be filed in the election.

Added by Acts 1991, 72nd Leg., ch. 363, § 1, eff. Sept. 1, 1991.

§ 146.054. Filing Deadline

A declaration of write-in candidacy must be filed not later than 5 p.m. of the fifth day after the date an application for a place on the ballot is required to be filed.

Added by Acts 1991, 72nd Leg., ch. 363, § 1, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 667, § 2, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1349, § 56, eff. Sept. 1, 1997.

§ 146.055. Applicability of Other Code Provisions

Subchapter B applies to write-in voting in an election for city officers except to the extent of a conflict with this subchapter.

Added by Acts 1991, 72nd Leg., ch. 363, § 1, eff. Sept. 1, 1991. Amended by Acts 2001, 77th Leg., ch. 215, § 1, eff. Sept. 1, 2001.

**SUBCHAPTER D. WRITE-IN CANDIDATE IN SPECIAL
ELECTION TO FILL VACANCY IN LEGISLATURE**

§ 146.081. Candidate's Name Required to Appear on List

In a special election to fill a vacancy in the legislature, a write-in vote may not be counted unless the name written in appears on the list of write-in candidates.

Added by Acts 2001, 77th Leg., ch. 17, § 3, eff. Jan. 1, 2002.

§ 146.082. Declaration of Write-in Candidacy Required

To be entitled to a place on the list of write-in candidates, a candidate must file a declaration of write-in candidacy with the secretary of state.

Added by Acts 2001, 77th Leg., ch. 17, § 3, eff. Jan. 1, 2002.

§ 146.083. Filing Deadline

A declaration of write-in candidacy must be filed not later than 5 p.m. of the fifth day after the date an application for a place on the ballot is required to be filed.

Added by Acts 2001, 77th Leg., ch. 17, § 3, eff. Jan. 1, 2002.

§ 146.084. Applicability of Other Code Provisions

Subchapter B applies to write-in voting in a special election to fill a vacancy in the legislature except to the extent of a conflict with this subchapter.

Added by Acts 2001, 77th Leg., ch. 17, § 3, eff. Jan. 1, 2002.

TITLE 10. POLITICAL PARTIES

WESTLAW Computer Assisted Legal Research

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For more information on using WESTLAW to supplement your research, see the WESTLAW Electronic Research Guide, which follows the Preface.

Library References

Party nominations, see Brooks, 35 Texas Practice § 11.21.

SUBTITLE A. INTRODUCTORY PROVISIONS

CHAPTER 161. GENERAL PROVISIONS

Section		Section	
161.005.	Eligibility for Party Offices Generally.	161.007.	Unlawfully Prohibiting Employee From Attending Political Convention.
161.006.	Holding Precinct Convention of More Than One Party in Same Building.		

Library References

Party nominations, see Brooks, 35 Texas Practice § 11.21.

§ 161.001. Inherent Powers

United States Supreme Court

Ballot petitions, number of signatures required of new political parties in multidistrict political subdivisions, see Norman v. Reed, U.S.Ill.1992, 112 S.Ct. 698, 502 U.S. 279, 116 L.Ed.2d 711, on remand 154 Ill.2d 77, 180 Ill.Dec. 685, 607 N.E.2d 1198.

Party names, established political parties, affiliation, restrictions on use, see Norman v. Reed, U.S.Ill.1992, 112 S.Ct. 698, 502 U.S. 279, 116 L.Ed.2d 711, on remand 154 Ill.2d 77, 180 Ill.Dec. 685, 607 N.E.2d 1198.

§ 161.003. Methods of Making Nominations

Notes of Decisions

Construction and application 1

1. Construction and application

A political party's executive committee may not make a nomination for an office appearing on the general election ballot if no one filed for the office in the party's primary; hence, the executive com-

mittees of the Republican and Democratic parties could not name candidates to appear on the general election ballot for the office of judge of the newly created 371st District Court of Tarrant County where no candidates had filed in either party's primary, although declarations of write-in candidacy had been filed. Election Law Opinion No. GSB-3 (1990).

§ 161.005. Eligibility for Party Offices Generally

(a) To be eligible to be a candidate for or to serve as a county or precinct chair of a political party, a person must:

- (1) be a qualified voter of the county; and
- (2) not be a candidate for nomination or election to, or be the holder of, an elective office of the federal, state, or county government.

(b) For purposes of this section, a person becomes a candidate at the earliest time at which one of the following occurs:

- (1) the person files:
 - (A) a declaration of intent to run as an independent candidate;
 - (B) an application for a place on a primary or general election ballot or for nomination by a convention; or
 - (C) a declaration of write-in candidacy; or
- (2) the person is nominated by a convention or executive committee.

Amended by Acts 1997, 75th Leg., ch. 864, § 105, eff. Sept. 1, 1997.

§ 161.006. Holding Precinct Convention of More Than One Party in Same Building

A political party may not hold a precinct convention in the same building in which another party is holding a precinct convention on the same day unless:

- (1) the rooms in which the conventions are held are separated so that communication from one room to the other is precluded; and
- (2) a sign in bold print identifying the party holding the convention is posted at the entrance to each room.

Amended by Acts 1997, 75th Leg., ch. 1349, § 57, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1350, § 7, eff. Sept. 1, 1997.

§ 161.007. Unlawfully Prohibiting Employee From Attending Political Convention

(a) A person commits an offense if, with respect to another over whom the person has authority in the scope of employment, the person knowingly:

- (1) refuses to permit the other person to be absent from work for the purpose of attending a precinct convention in which the other person is eligible to participate or attending a county, district, or state convention to which the other person is a delegate; or
- (2) subjects or threatens to subject the other person to a penalty for the purpose of preventing or retaliating for the other person's attendance at a precinct convention in which the other person is eligible to participate or for the other person's attendance at a county, district, or state convention to which the other person is a delegate.

(b) In this section, "penalty" means a loss or reduction of wages or other benefit of employment other than a deduction for the actual time of absence from work.

(c) An offense under this section is a Class C misdemeanor.

Amended by Acts 1997, 75th Leg., ch. 864, § 106, eff. Sept. 1, 1997.

Law Review and Journal Commentaries

Developments in the law of wrongful discharge in Texas. John H. Spurgin, II, 54 Tex.B.J. 108 (1991).

§ 161.009. Party Officer Subject to Mandamus

Notes of Decisions

1. Construction and application

The Supreme Court had jurisdiction to entertain petition for writ of mandamus which sought declaration ordering Chairman of Republican Party to declare candidate in Republican Party primary for Justice of Supreme Court ineligible, and ordering Secretary of State not to certify the candidate as a nominee for the office of Justice of the Supreme

Court. *Sears v. Bayoud* (Sup. 1990) 786 S.W.2d 248.

Courts may review, by mandamus, actions of persons upon whom duties are imposed by law in connection with holding of election or a party convention. *Wentworth v. Meyer* (App. 4 Dist. 1992) 837 S.W.2d 148, mandamus conditionally granted, subsequent mandamus proceeding 839 S.W.2d 766.

CHAPTER 162. REGULATING PARTICIPATION IN PARTY AFFAIRS

Section

- 162.003. Affiliation by Voting in Primary.
- 162.004. Affiliation Procedure: Voting at Polling Place.
- 162.005. Affiliation Procedure: Early Voting by Mail.
- 162.007. Affiliation Procedure: Taking Oath at Precinct Convention.

Section

- 162.008. Affiliation Procedure: Taking Oath Generally.
- 162.015. Restrictions on Candidacy in General Election by Candidate or Voter in Primary.

§ 162.003. Affiliation by Voting in Primary

A person becomes affiliated with a political party when the person:

- (1) is accepted to vote in the party's primary election; or
- (2) applies for and is provided an early voting or limited primary ballot to be voted by mail.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.62; Acts 1991, 72nd Leg., ch. 554, § 33, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 141.034.

United States Supreme Court

Freedom of association

Political parties, blanket primary allowing voters to vote for any candidate regardless of voter's or candidate's party affiliation, state interests, see *California Democratic Party v. Jones*, 2000, 120 S.Ct. 2402.

Validity of closed primaries when party rule allows participation of unaffiliated voters,

see *Tashjian v. Republican Party of Connecticut*, U.S.Conn.1986, 107 S.Ct. 544, 479 U.S. 208, 93 L.Ed.2d 514.

Qualifications for voting, party rule allowing non-affiliated voters to participate in primaries, see *Tashjian v. Republican Party of Connecticut*, U.S.Conn.1986, 107 S.Ct. 544, 479 U.S. 208, 93 L.Ed.2d 514.

§ 162.004. Affiliation Procedure: Voting at Polling Place

(a) The signature roster for a primary election must state at the top of each page: "A person commits a criminal offense if the person knowingly votes in a primary election or participates in a convention of a party after having voted in a primary election or participated in a convention of another party during the same voting year."

(b) An election officer at a primary election polling place shall stamp the party's name in the party affiliation space of the registration certificate of each voter who presents the voter's registration certificate and is accepted to vote unless the party name has already been stamped in the space.

(c) If a voter is accepted to vote without presenting a registration certificate, the presiding judge shall issue the voter an affiliation certificate. The certificate is not required to be issued to a voter in a runoff primary unless the voter requests it.

Amended by Acts 1997, 75th Leg., ch. 864, § 107, eff. Sept. 1, 1997.

§ 162.005. Affiliation Procedure: Early Voting by Mail

The early voting clerk in a general primary election shall provide an affiliation certificate with each early voting or limited ballot to be voted by mail. The certificate is not required to be provided to an applicant for a runoff primary ballot unless the applicant requests it.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.63; Acts 1991, 72nd Leg., ch. 554, § 34, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 141.034.

§ 162.007. Affiliation Procedure: Taking Oath at Precinct Convention

(a) This section applies only to a precinct convention held under this title by a political party making nominations by convention.

(b) On admitting a person for participation in the convention, the temporary chair shall administer to the person the following oath: "I swear that I have not voted in a primary election or participated in a convention of another party during this voting year. I hereby affiliate myself with the _____ Party."

(c) After administering the oath, the temporary chair shall request the person's registration certificate and stamp the party's name in the party affiliation space unless the party name has already been stamped in the space. If the person does not present a registration certificate, the temporary chair on the person's request shall issue the person an affiliation certificate.

Amended by Acts 1997, 75th Leg., ch. 864, § 108, eff. Sept. 1, 1997.

§ 162.008. Affiliation Procedure: Taking Oath Generally

(a) This section applies only to a person desiring to affiliate with a political party during that part of a voting year in which the general election for state and county officers is held that follows:

(1) the date of the precinct conventions held under this title, for a party nominating by convention; or

(2) 7 p.m. on general primary election day, for a party holding a primary election.

(b) On request of a person desiring to affiliate with a political party, a member of the county executive committee for the county in which the person resides shall administer the oath prescribed by Section 162.007(b).

(c) After administering the oath, the committee member shall stamp the party's name on the person's registration certificate or issue the person an affiliation certificate as provided by Section 162.007(c).

Amended by Acts 1997, 75th Leg., ch. 864, § 109, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1349, § 58, eff. Sept. 1, 1997.

§ 162.014. Unlawful Participation in Party Affairs

Library References

Party nominations, see Brooks, 35 Texas Practice § 11.21.

§ 162.015. Restrictions on Candidacy in General Election by Candidate or Voter in Primary

(a) A person who voted at a primary election or who was a candidate for nomination in a primary is ineligible for a place on the ballot for the succeeding general election for state and county officers as:

- (1) an independent candidate for an office for which a candidate was nominated in the primary; or
- (2) the nominee of a political party other than the party holding the primary in which the person voted or was a candidate.

(b) A person who was a candidate for nomination in a primary election is ineligible for a place on the list of write-in candidates for the succeeding general election for state and county officers as a write-in candidate for the office sought by that candidate in the primary. Amended by Acts 1991, 72nd Leg., ch. 363, § 2, eff. Sept. 1, 1991.

Notes of Decisions

Injunctions 2
Validity ½

2. Injunctions

Political party and supporters of candidate failed to show likelihood of success on merits of their action seeking declaration that "sore loser" statute, which bars selection of nominee who has already run in party primary and lost, was unconstitutional abridgement of freedom of speech and association and privileges and immunities as would support preliminary injunction; statute was designed to address factionalism, intra-party feuding, and voter confusion and these considerations outweighed minimal burden state placed on rights of voters. National Committee of U.S. Taxpayers Party v. Garza, W.D.Tex.1996, 924 F.Supp. 71.

½. Validity

When state election law provision imposes only reasonable, nondiscriminatory restrictions upon constitutional rights of voters, State's important regulatory interests are generally sufficient to justify restriction. National Committee of U.S. Taxpayers Party v. Garza, W.D.Tex.1996, 924 F.Supp. 71.

State may impose restrictions which settle intra-party competition before general election. National Committee of U.S. Taxpayers Party v. Garza, W.D.Tex.1996, 924 F.Supp. 71.

CHAPTER 163. PARTY RULES

Section
163.004. Adopting Rules.
163.005. Filing Rules With Secretary of State; Effective Date.

Section
163.006. Deadline for Filing Certain Rules.

§ 163.002. Required Rules

Library References

Party nominations, see Brooks, 35 Texas Practice § 11.21.

§ 163.004. Adopting Rules

(a) A political party's rules, including amendments to rules, governing or affecting its general or runoff primary elections, conventions held under this code, or nominees may be adopted only by:

- (1) a state convention; or
- (2) the state executive committee as a temporary rule, if adoption before the next state convention is necessary.

(b) A temporary rule must be considered by the first state convention following its adoption. The state convention may rescind, modify, or ratify the temporary rule. If the state convention fails to act, the temporary rule expires on the day after the date the convention adjourns.

POLITICAL PARTIES

§ 163.006

Title 10

(c) In this chapter, "rule on electoral affairs" means a rule or amendment of the class described by Subsection (a).

Amended by Acts 1986, 69th Leg., 3rd C.S., ch. 14, § 8, eff. Sept. 1, 1987.

Historical and Statutory Notes

1986 Legislation

The 1986 amendment, in subsec. (a), inserted "general or runoff" before "primary elections".

§ 163.005. Filing Rules With Secretary of State; Effective Date

(a) The state chair shall file a copy of each rule on electoral affairs with the secretary of state.

(b) Except as provided by Section 163.006, the rule shall be filed not later than the 30th day after the date of its adoption.

(c) If the state chair fails to make a timely filing, any member of the state executive committee may make the filing.

(d) A filing must be accompanied by a written statement signed by the state chair or any two members of the state executive committee indicating whether the rule is temporary or permanent.

(e) A rule on electoral affairs is not effective until filed.

Amended by Acts 1997, 75th Leg., ch. 864, § 110, eff. Sept. 1, 1997.

§ 163.006. Deadline for Filing Certain Rules

(a) A rule on electoral affairs that is to become effective in a year in which the party will hold precinct conventions under this title must be filed with the secretary of state not later than the 30th day before the date of convening the precinct conventions. The secretary of state may extend this deadline for good cause.

(b) If a political party fails to file a rule as provided by Subsection (a), the party is not entitled to have its nominees placed on the ballot for the general election for state and county officers.

(c) Before general primary election day, the secretary of state shall notify the authority responsible for having the official general election ballot prepared in each county of each political party that failed to file a rule as provided by Subsection (a) and shall order those authorities to omit the party's nominees from the general election ballot.

(d) Before January 15 of each year in which political parties hold precinct conventions under this title, the secretary of state shall deliver written notice of the requirements of this section to the state chair of each party that had a nominee for a statewide or district office on the most recent general election ballot.

Amended by Acts 1997, 75th Leg., ch. 864, § 111, eff. Sept. 1, 1997.

SUBTITLE B. PARTIES NOMINATING BY PRIMARY ELECTION

CHAPTER 171. ORGANIZATION

SUBCHAPTER A. STATE EXECUTIVE COMMITTEE

Section

- 171.002. Committee Composition.
- 171.003. Filling Vacancy.

Section

- 171.023. Residence of Precinct Chair.
- 171.0231. Write-in Candidate for Precinct Chair.
- 171.024. Filling Vacancy.
- 171.025. Procedure for Filling Vacancy in Office of County Chair.
- 171.027. Temporary Committee.

SUBCHAPTER B. COUNTY EXECUTIVE COMMITTEE

- 171.022. Committee Composition.
- 171.0221. Election Not Held for Office of Precinct Chair.

SUBCHAPTER C. DISTRICT EXECUTIVE COMMITTEE

- 171.052. Committee Composition: District Co-terminous With County.

Section		Section	
171.053.	Committee Composition: District Comprising Part of a County; First Meeting.		SUBCHAPTER D. PRECINCT EXECUTIVE COMMITTEE
171.054.	Committee Composition: District Situated in More Than One County; First Meeting.	171.072.	Committee Composition: Precinct With Three or More Election Precincts; First Meeting.
		171.073.	Committee Composition: Precinct With Fewer Than Three Election Precincts.

SUBCHAPTER A. STATE EXECUTIVE COMMITTEE

§ 171.002. Committee Composition

(a) The state executive committee consists of two members from each state senatorial district. One of each district's members must be a man and the other a woman.

(b) In addition to the members representing the senatorial districts, the committee has a chair and a vice chair, one of whom must be a man and the other a woman. Except as otherwise provided by party rule, the chair and vice chair are considered members of the committee.

(c) The chair, vice chair, and members representing the senatorial districts are elected at the party's biennial state convention. However, the chair, vice chair, and members may be elected for four-year terms at the state convention held in gubernatorial election years. Each holds office until a successor is elected and assumes office.

(d) The members elected to represent a particular senatorial district must be those recommended by the convention delegates representing that senatorial district.

Amended by Acts 1997, 75th Leg., ch. 864, § 112, eff. Sept. 1, 1997.

§ 171.003. Filling Vacancy

(a) The state executive committee shall fill by appointment any vacancy on the committee, including a vacancy in the office of chair or vice chair.

(b) A majority of the committee's membership constitutes a quorum for the purpose of filling a vacancy. To be elected, a person must receive a favorable vote of a majority of the members voting.

(c) To be eligible to serve as a replacement to fill a vacancy in a membership representing a senatorial district, a person must reside in the district.

Amended by Acts 1997, 75th Leg., ch. 864, § 113, eff. Sept. 1, 1997.

SUBCHAPTER B. COUNTY EXECUTIVE COMMITTEE

§ 171.021. County Executive Committee Established

United States Supreme Court

Freedom of speech and association, ban on political party primary endorsements, see *Eu v. San Francisco County Democratic Cent. Committee*, U.S.Cal.1989, 109 S.Ct. 1013, 489 U.S. 214, 103 L.Ed.2d 271.

§ 171.022. Committee Composition

(a) A county executive committee consists of:

(1) a county chair, who is the presiding officer, elected at the general primary election by majority vote of the qualified voters of the county who vote in the primary on that office or appointed by the county executive committee as provided by this subchapter; and

(2) a precinct chair from each county election precinct, elected at the general primary by majority vote of the qualified voters of the precinct who vote in the primary on that office, subject to Section 171.0221, or appointed by the county executive committee as provided by this subchapter.

(b) Except as provided by Subsection (d), if no candidate receives a majority of the votes, a runoff to determine the office is conducted in the same manner as a runoff primary election to determine a nomination for public office. The candidates to be in a runoff are determined in the same manner as candidates in a runoff for a nomination.

(c) Each committee member serves for a term of two years beginning the 20th day after runoff primary election day.

(d) The state executive committee by rule may provide for the election of the county chair or precinct chairs of a particular county by plurality vote.

Amended by Acts 1993, 73rd Leg., ch. 728, § 63, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 499, § 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 864, § 114, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1349, § 59, eff. Sept. 1, 1997.

Library References

Party nominations, see Brooks, 35 Texas Practice § 11.21.

§ 171.0221. Election Not Held for Office of Precinct Chair

(a) If only one candidate's name is to be placed on the ballot for the office of precinct chair and no candidate's name is to be placed on the list of write-in candidates for that office, the election for that office is not held, and the unopposed candidate, if otherwise eligible, shall be declared elected to the office at the time of the local canvass.

(b) The county chair shall prepare a sign that states: "Pursuant to Section 171.0221, Election Code, (insert name of unopposed candidate for precinct chair), if otherwise eligible, shall be declared elected to the office of precinct chair at the time of the local canvass." The county chair shall distribute copies of the sign to the presiding judge of the election precinct with the other election supplies. An election officer shall post the sign in one or more locations in the polling place where it can be read by persons waiting to vote.

(c) The county chair shall post the name of a candidate declared elected under Subsection (a) at a public place in the election precinct.

Added by Acts 1997, 75th Leg., ch. 499, § 2, eff. Sept. 1, 1997.

§ 171.023. Residence of Precinct Chair

(a) To be eligible to be a candidate for or to serve as a precinct chair, a person must reside in the election precinct in addition to satisfying the other applicable eligibility requirements.

(b) A change in a county election precinct boundary creates a vacancy in the office of precinct chair if more than one precinct chair resides in the changed precinct or if none resides there.

(c) For the purpose of determining whether a precinct chair is a resident of a particular county election precinct, a change in a precinct boundary is not effective until February 1 following the adoption of the order making the change, except as provided by Subsection (d).

(d) If a change in a precinct boundary made by an order adopted on or after February 1 of a primary election year is scheduled to become effective before general primary election day, the change is effective on the date the order is adopted for the purpose specified by Subsection (c).

Amended by Acts 1997, 75th Leg., ch. 864, § 115, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, § 5.12, eff. Sept. 1, 1999.

§ 171.0231. Write-in Candidate for Precinct Chair

(a) Except as provided by Subsection (f), a write-in vote for the office of precinct chair may not be counted unless the name written in appears on the list of write-in candidates.

(b) To be entitled to a place on the list of write-in candidates, a candidate must make a declaration of write-in candidacy.

(c) A declaration of write-in candidacy must be filed with the authority with whom an application for a place on the ballot is required to be filed for the office.

(d) A declaration of write-in candidacy must be filed not later than 5 p.m. of the 62nd day before general primary election day. However, if a candidate whose name is to appear on the

ballot for the office of precinct chair dies or is declared ineligible after the third day before the date of the regular filing deadline prescribed by this subsection, a declaration of write-in candidacy for the office sought by the deceased or ineligible candidate may be filed not later than 5 p.m. of the 59th day before election day.

(e) With the appropriate modifications and to the extent practicable, Subchapter B, Chapter 146,¹ applies to write-in voting for the office of precinct chair.

(f) If no candidate's name is to be placed on the ballot or the list of write-in candidates for the office of precinct chair, write-in votes may be cast and counted for the office in the regular manner.

(g) The secretary of state shall prescribe any procedures necessary to implement this section.

Added by Acts 1997, 75th Leg., ch. 499, § 3, eff. Sept. 1, 1997.

¹ V.T.C.A., Election Code § 146.021 et seq.

§ 171.024. Filling Vacancy

(a) The county executive committee shall fill by appointment any vacancy on the committee.

(b) Except as provided by Subsection (c), a majority of the committee's membership must participate in filling a vacancy. To be elected, a person must receive a favorable vote of a majority of the members voting.

(c) A vacancy in the office of precinct chair may be filled without participation of the majority of the committee membership if only one person is a candidate to fill the vacancy and the person:

- (1) was elected as a precinct chair in the most recent primary election in the county; and
- (2) is eligible to serve in the vacant office.

(d) A vacancy may not be filled before the beginning of the term of office in which the vacancy occurs.

(e) After a vacancy is filled, the county chair shall promptly deliver written notice of the replacement member's name and address to the state chair and to the county clerk.

Amended by Acts 1997, 75th Leg., ch. 864, § 116, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1349, § 60, eff. Sept. 1, 1997.

§ 171.025. Procedure for Filling Vacancy in Office of County Chair

(a) If a vacancy occurs in the office of county chair, the secretary of the county executive committee shall call a meeting for the purpose of filling the vacancy. If a committee member files with the secretary a written request for a meeting to fill a vacancy, the secretary shall call the meeting to convene not later than the 20th day after the date the secretary receives the request.

(b) If the committee does not have a secretary or if after receiving a written request under Subsection (a) the secretary fails to call the meeting, the state chair, on written request of a member of the county executive committee filed with the state chair, shall call the meeting to convene not later than the 20th day after the date the chair receives the request.

(c) The authority calling the meeting shall notify each committee member in advance of the meeting of its time, place, and purpose.

(d) The authority calling the meeting shall designate a committee member as temporary chair, who shall call the meeting to order and preside until the vacancy is filled.

Amended by Acts 1997, 75th Leg., ch. 864, § 117, eff. Sept. 1, 1997.

§ 171.027. Temporary Committee

(a) If a county executive committee for a political party does not exist in a county in which the party is holding a primary election, the party shall establish a temporary county executive committee as provided by this section.

(b) The state executive committee shall appoint a temporary county chair. To be appointed, a person must receive a favorable vote of a majority of the committee's membership.

(c) The temporary county chair shall call, for the purpose of electing the other members of a temporary county executive committee, a meeting of the voters of the county who consider themselves to be aligned with the party. The voters present at the meeting shall elect the other members of the committee.

(d) The eligibility requirements for serving as a member of a temporary county executive committee are the same as those for serving as a member of a regularly constituted county executive committee except that affiliation with the political party is not required.

(e) A temporary county executive committee may exercise the authority and shall perform the duties of a regularly constituted county executive committee.

(f) A county executive committee for a county served by a temporary committee shall be elected at the general primary election. The temporary committee members serve until the elected members assume office.

Amended by Acts 1997, 75th Leg., ch. 864, § 118, eff. Sept. 1, 1997.

SUBCHAPTER C. DISTRICT EXECUTIVE COMMITTEE

Library References

Party nominations, see Brooks, 35 Texas Practice § 11.21.

§ 171.052. Committee Composition: District Coterminous With County

The district executive committee for a district that is coterminous with a single county consists of the county executive committee, with the county chair serving as chair of the district committee.

Amended by Acts 1997, 75th Leg., ch. 864, § 119, eff. Sept. 1, 1997.

§ 171.053. Committee Composition: District Comprising Part of a County; First Meeting

(a) The district executive committee for a district comprising only a part of a single county consists of the precinct chairs of the county election precincts in the district.

(b) The members of a district executive committee shall elect a chair at the committee's first meeting from among the committee membership.

(c) Except as provided by Subsection (d), the county chair shall call the first meeting of the district executive committee to convene at any time after the precinct chairs take office. The county chair shall notify each committee member in advance of the meeting of its time, place, and purpose.

(d) If a vacancy exists in the office of chair of a senatorial district executive committee immediately before the date for conducting the regular drawing for a place on the general primary ballot, the committee shall convene on that date at the hour and place specified by the county chair to elect the district executive committee chair.

(e) Not later than the third day after the date the chair for a senatorial district executive committee is elected, the county chair shall deliver to the state chair written notice of the name and address of the person elected.

Amended by Acts 1997, 75th Leg., ch. 864, § 120, eff. Sept. 1, 1997.

§ 171.054. Committee Composition: District Situated in More Than One County; First Meeting

(a) The district executive committee for a district situated in more than one county consists of:

(1) the county chair of each county that is wholly situated in the district; and

(2) one precinct chair from each county that is only partly situated in the district, elected by and from among the precinct chairs of the precincts in that part of the county.

(b) Except as provided by Subsection (c), the county chair shall call a meeting to convene at any time after the precinct chairs take office to elect the precinct chair who is to serve on a

district executive committee. The county chair shall notify the appropriate precinct chairs in advance of the meeting of its time, place, and purpose. Not later than the third day after the date the district executive committee member is elected, the county chair shall deliver to the state chair written notice of the name and address of the person elected.

(c) If a vacancy exists in the office of precinct chair on a senatorial district executive committee immediately before the date for conducting the regular drawing for a place on the general primary ballot, the appropriate precinct chairs shall convene on that date at the hour and place specified by the county chair to elect that officer.

(d) The members of a district executive committee shall elect a chair at the committee's first meeting from among the committee membership.

(e) The state chair shall call the first meeting of the district executive committee and shall notify each committee member in advance of the meeting of its time, place, and purpose.

Amended by Acts 1997, 75th Leg., ch. 864, § 121, eff. Sept. 1, 1997.

SUBCHAPTER D. PRECINCT EXECUTIVE COMMITTEE

Library References

Party nominations, see Brooks, 35 Texas Practice § 11.21.

§ 171.072. Committee Composition: Precinct With Three or More Election Precincts; First Meeting

(a) The precinct executive committee for a commissioners precinct or for a justice precinct containing three or more county election precincts consists of the precinct chair of each county election precinct in the commissioners or justice precinct, as applicable.

(b) The members of a precinct executive committee shall elect a chair at the committee's first meeting from among the committee membership.

(c) The county chair shall call the first meeting of the precinct executive committee and shall notify each committee member in advance of the meeting of its time, place, and purpose.

Amended by Acts 1997, 75th Leg., ch. 864, § 122, eff. Sept. 1, 1997.

§ 171.073. Committee Composition: Precinct With Fewer Than Three Election Precincts

The precinct executive committee for a commissioners precinct or for a justice precinct containing fewer than three county election precincts consists of the county executive committee, with the county chair serving as chair of the precinct committee.

Amended by Acts 1997, 75th Leg., ch. 864, § 123, eff. Sept. 1, 1997.

CHAPTER 172. PRIMARY ELECTIONS

SUBCHAPTER A. NOMINATING BY PRIMARY ELECTION GENERALLY

Section 172.002. Nominating by Primary Election Authorized.

Section 172.026. Restriction on Petition Signer.
 172.027. Statement on Petition.
 172.028. State Chair's Certification of Names for Placement on General Primary Ballot.
 172.029. List of Candidates.

SUBCHAPTER B. APPLICATION FOR PLACE ON BALLOT

172.021. Application Required.
 172.022. Authority With Whom Application Filed.
 172.023. Regular Filing Period.
 172.024. Filing Fee.
 172.025. Number of Petition Signatures Required.

SUBCHAPTER C. WITHDRAWAL, DEATH, AND INELIGIBILITY OF CANDIDATE

172.052. Withdrawal From General Primary.
 172.054. Extended Filing Deadline.
 172.055. Public Notice of Extended Filing.
 172.056. Supplemental List of Candidates.
 172.057. Withdrawn, Deceased, or Ineligible Candidate's Name Omitted From General Primary Ballot.

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- 172.058. Deceased or Ineligible Candidate's Name to Appear on General Primary Ballot.
172.059. Withdrawal From Runoff Primary.
172.061. Candidate for Party Office.

SUBCHAPTER D. BALLOT

- 172.081. Primary Committee.
172.082. Order of Names on General Primary Ballot: Regular Drawing.
172.083. Review and Approval of Ballot by Primary Committee.
172.084. Order of Names on Runoff Primary Ballot.
172.088. Voter Petition for Referendum.
172.089. Order of Party Offices on Ballot.
172.090. Separate Ballot for Office of Precinct Chair.

SUBCHAPTER E. CONDUCT OF ELECTION

- 172.1111. Posting Notice of Precinct Convention Required.
172.1112. Notice of Election.
172.112. Write-in Voting.

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- 172.113. Unofficial Tabulation of Precinct Results.
172.1141. List of Registered Voters for Convention.
172.115. Disposition of List of Registered Voters.
172.116. Local Canvass.
172.117. Certification of Nominees for County and Precinct Offices for Placement on General Election Ballot.
172.118. Notice of Persons Elected as Party Officers.
172.119. County Election Returns.
172.120. State Canvass.
172.121. Certification of Candidates for Statewide and District Offices for Placement on Runoff Ballot.
172.122. Certification of Nominees for Statewide and District Offices to Secretary of State.
172.123. Entering Primary Results in Election Register.
172.124. Reporting Precinct Results to Secretary of State.
172.125. Additional Procedure for Accepting Voters in Runoff.
172.126. Joint Primaries Authorized.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

Library References

Party nominations, see Brooks, 35 Texas Practice § 11.21.

SUBCHAPTER A. NOMINATING BY PRIMARY ELECTION GENERALLY

§ 172.002. Nominating by Primary Election Authorized

(a) Except as otherwise provided by this code, a political party's nominees in the general election for offices of state and county government and the United States Congress may be nominated by primary election, held as provided by this code, if the party's nominee for governor in the most recent gubernatorial general election received at least two percent but less than 20 percent of the total number of votes received by all candidates for governor in the election.

(b) If any nominee of a party is nominated by primary election, none of that party's nominees may be nominated that year by convention.

(c) For a political party to be entitled to hold a primary election under this section, the state chair, not later than one year before general election day, must deliver written notice to the secretary of state that the party will hold a primary election in the general election year. Amended by Acts 1997, 75th Leg., ch. 864, § 124, eff. Sept. 1, 1997.

SUBCHAPTER B. APPLICATION FOR PLACE ON BALLOT

§ 172.021. Application Required

(a) To be entitled to a place on the general primary election ballot, a candidate must make an application for a place on the ballot.

(b) An application must, in addition to complying with Section 141.031, be accompanied by the appropriate filing fee or, instead of the filing fee, a petition that satisfies the requirements prescribed by Section 141.062. A political party may not require payment of a fee as a condition to applying for a place on the ballot as a candidate for county chair or precinct chair.

(c) An application filed by mail is considered to be filed at the time of its receipt by the appropriate authority.

(d) The circulation of a petition to be filed under this subchapter in connection with a candidate's application for a place on the ballot does not constitute candidacy or an announcement of candidacy for purposes of the automatic resignation provisions of Article XVI, Section 65, or Article XI, Section 11, of the Texas Constitution.

(e) A candidate for an office specified by Section 172.024(a)(8), (10), or (12), or for justice of the peace in a county with a population of more than 850,000, who chooses to pay the filing fee must also accompany the application with a petition that complies with the requirements prescribed for the petition authorized by Subsection (b), except that the minimum number of signatures that must appear on the petition required by this subsection is 250. If the candidate chooses to file the petition authorized by Subsection (b) instead of the filing fee, the minimum number of signatures required for that petition is increased by 250. Signatures on a petition filed under this subsection or Subsection (b) by a candidate covered by this subsection may not be obtained on the grounds of a county courthouse or courthouse annex.

(f) A political party's state executive committee by rule may require that an application for the office of county chair be accompanied by a nominating petition containing the signatures of at least 10 percent of the incumbent precinct chairs serving on the county executive committee.

Amended by Acts 1986, 69th Leg., 3rd C.S., ch. 14, § 9, eff. Sept. 1, 1987; Acts 1987, 70th Leg., ch. 54, § 13(b), eff. Sept. 1, 1987; Acts 1987, 70th Leg., ch. 90, § 1, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 2, § 7.09, eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 265, § 1, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 728, § 64, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 864, § 125, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, § 5.13, eff. Sept. 1, 1999.

Historical and Statutory Notes

1986 Legislation

The 1986 amendment, in subsec. (c), deleted "with the county chairman" after "filed by mail", and added subsec. (d).

1987 Legislation

Acts 1987, 70th Leg., ch. 54, § 13(b), to conform this section to Acts 1985, 69th Leg., ch. 979 [see italicized note, main volume], added subsec. (c) and § 14(b) repealed Acts 1985, 69th Leg., ch. 979.

Acts 1987, 70th Leg., ch. 90, § 1, to conform this section to Acts 1985, 69th Leg., ch. 966, § 9 and Acts 1985, 69th Leg., ch. 979 [see italicized note under this section and § 172.024, main volume], added subsec. (e) and § 4(b) repealed Acts 1985, 69th Leg., ch. 979.

Section 4(a) of Acts 1987, 70th Leg., ch. 90, provides:

"In addition to the new changes in law made by this Act in regard to the filing of petitions in connection with certain candidates' applications for a place on the ballot, this Act conforms the provisions of the Election Code relating to that subject to the related changes in law made by Chapter 979, Acts of the 69th Legislature, Regular Session, 1985, and by Section 9, Chapter 966, Acts of the 69th Legislature, Regular Session, 1985."

1989 Legislation

Acts 1989, 71st Leg., ch. 2, § 7.09, repealed a former subsec. (e) as added by Acts 1987, 70th Leg., ch. 54, § 13 to conform to its implied repeal by Acts 1987, 70th Leg., ch. 90, § 1, which added another subsec. (e).

Acts 1989, 71st Leg., ch. 265, § 1 in subsec. (e), in the first sentence, substituted "850,000" for "2,400,000".

Notes of Decisions

Number of signatures 13
Validity ½

Validity of signatures 14

½. Validity

Subdivision (e) of this section requiring candidate for judicial office to either pay a filing fee and tender a petition with 250 signatures, or tender a

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petition with 750 signatures, did not constitute an unconstitutional denial of access to ballot. *Atkinson v. Carter* (App. 14 Dist. 1990) 785 S.W.2d 449, mandamus conditionally granted 789 S.W.2d 260, rehearing overruled.

Challenge to valid number of signatures in petitions to have candidate's name placed on ballot, which was contested by candidate, had to be resolved in trial court and not by appellate court in original mandamus proceeding. *Carter v. Fourteenth Court of Appeals* (Sup. 1990) 789 S.W.2d 260, rehearing overruled.

13. Number of signatures

Candidate for district judgeship was required to submit either 250 valid signatures and filing fee, or 750 valid signatures in lieu of the filing fee. *Plummer v. Veselka* (App. 1 Dist. 1988) 744 S.W.2d 347.

Duplicate signatures contained on Court of Appeals justice candidate's petition filed in lieu of filing fee would not be counted to satisfy minimum of 750 signatures, notwithstanding candidate's claim that he was provided with two separate forms by Secretary of State for collecting signa-

tures, and was misled by employee of Secretary of State's office as to permissibility of duplicate signatures. *Cohen v. Rains* (App. 14 Dist. 1988) 745 S.W.2d 949.

Candidate for office of Court of Appeals justice was not entitled to have his name placed on ballot for Republican primary election owing to failure to accompany application for place on ballot with petition signed by at least 750 registered voters. *Cohen v. Rains* (App. 14 Dist. 1988) 745 S.W.2d 949.

14. Validity of signatures

Signatures on petitions of candidate for office of judge which were supported by either no registration number, wrong number, or a missing city and missing zip code, or of persons who were not registered voters were invalid, and since subtracting those names from petitions resulted in inadequate number of signatures, candidate's application for place on ballot should have been rejected. *Atkinson v. Carter* (App. 14 Dist. 1990) 785 S.W.2d 449, mandamus conditionally granted 789 S.W.2d 260, rehearing overruled.

§ 172.022. Authority With Whom Application Filed

(a) An application for a place on the general primary election ballot must be filed with:

(1) the state chair, for an office filled by voters of more than one county; or

(2) the county chair or the secretary, if any, of the county executive committee, for an office filled by voters of a single county.

(b) Not later than the day before the last day of the filing period, the county chair shall post on the bulletin board used for posting notice of meetings of the commissioners court a notice of the address at which the county chair or secretary will be available to receive applications on the last day of the filing period. If both the county chair and the secretary will be available, the notice must contain the address at which each will be available. Section 1.006 does not apply to this subsection.

Amended by Acts 1993, 73rd Leg., ch. 728, § 65, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 864, § 126, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 204, § 1, eff. Sept. 1, 1999.

§ 172.023. Regular Filing Period

(a) An application for a place on the general primary election ballot must be filed not later than 6 p.m. on January 2 in the primary election year unless the filing deadline is extended under Subchapter C.¹

(b) An application, other than an application for the office of precinct chair, may not be filed earlier than the 30th day before the date of the regular filing deadline. An application for the office of precinct chair may not be filed earlier than the 90th day before the date of the regular filing deadline.

Amended by Acts 1986, 69th Leg., 3rd C.S., ch. 14, § 10, eff. Sept. 1, 1987; Acts 1997, 75th Leg., ch. 864, § 127, eff. Sept. 1, 1997.

¹ Section 172.051 et seq.

Historical and Statutory Notes

1986 Legislation

The 1986 amendment, in subsec. (a), changed the filing date from the first Monday in February of

the primary election year to January 2 of the primary election year.

Law Review and Journal Commentaries

Texas legislative redistricting: Proposed constitutional and statutory amendments for an improved process. Arthur J. Anderson, 43 Sw.L.J. 719 (1989).

Notes of Decisions

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3. Time for filing

Candidate for office of county judge was entitled to mandamus order compelling county judge to accept his declaration of intent to seek the office, where candidate appeared at courthouse on day preceding deadline for filing and on day of deadline, but found courthouse closed on both days due to local holiday; inability to make proper application was not caused by candidate, and candidate was not required to exceed statutory requirements

by searching out judge upon finding courthouse closed. *Wallis v. McDonald* (Sup. 1994) 889 S.W.2d 236.

8. Review

District court proceedings to determine whether plan for redistricting State House of Representatives was invalid due to use of unadjusted census data, would not be enjoined pending appeal of fact issue to federal district court; there were fact issues to be resolved before appeal could be considered. *Richards v. Mena* (Sup. 1991) 820 S.W.2d 371.

§ 172.024. Filing Fee

(a) The filing fee for a candidate for nomination in the general primary election is as follows:

(1) United States senator	\$4,000
(2) office elected statewide, except United States senator	3,000
(3) United States representative	2,500
(4) state senator	1,000
(5) state representative	600
(6) member, State Board of Education	250
(7) chief justice or justice, court of appeals, other than a justice specified by Subdivision (8)	1,500
(8) chief justice or justice of a court of appeals that serves a court of appeals district in which a county with a population of more than 850,000 is wholly or partly situated	2,000
(9) district judge or judge specified by Section 52.092(d) for which this schedule does not otherwise prescribe a fee	1,200
(10) district or criminal district judge of a court in a judicial district wholly contained in a county with a population of more than 850,000	2,000
(11) judge, statutory county court, other than a judge specified by Subdivision (12)	1,200
(12) judge of a statutory county court in a county with a population of more than 850,000	2,000
(13) district attorney, criminal district attorney, or county attorney performing the duties of a district attorney	1,000
(14) county commissioner or judge, constitutional county court:	
(A) county with a population of 200,000 or more	1,000
(B) county with a population of under 200,000	600
(15) justice of the peace or constable:	
(A) county with a population of 200,000 or more	800
(B) county with a population of under 200,000	300
(16) county surveyor, inspector of hides and animals, or public weigher	50
(17) office of the county government for which this schedule does not otherwise prescribe a fee	600

(b) If a fee prescribed by Subsection (a) is declared invalid by a final judgment of a court, the secretary of state shall prescribe a filing fee consistent with the judgment to replace the invalidated fee.

Amended by Acts 1987, 70th Leg., ch. 54, § 14(a), eff. Sept. 1, 1987; Acts 1987, 70th Leg., ch. 90, § 2, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 265, § 2, eff. Sept. 1, 1989.

Historical and Statutory Notes

1987 Legislation

Acts 1987, 70th Leg., ch. 54, § 14 to conform this section to Acts 1985, 69th Leg., ch. 966, § 9, and Acts 1985, 69th Leg., ch. 979, § 1 [see italicized note, main volume] increased the filing fees for all offices except the state board of education, county surveyor, inspector of hides and animals, and public weigher, and added provisions relating to the offices of appellate courts, district courts, and statutory county courts in counties having in excess of 2.4 million inhabitants, and repealed Acts 1985, 69th Leg., ch. 966, and Acts 1985, 69th Leg., ch. 979.

Acts 1987, 70th Leg., ch. 90, § 2 made the same changes as ch. 54 and § 4(b) of ch. 90 also repealed Acts 1985, 69th Leg., ch. 966, § 9 and Acts 1985, 69th Leg., ch. 979.

Section 4(a) of Acts 1987, 70th Leg., ch. 90 provides:

"In addition to the new changes in law made by this Act in regard to the filing of petitions in connection with certain candidates' applications for

a place on the ballot, this Act conforms the provisions of the Election Code relating to that subject to the related changes in law made by Chapter 979, Acts of the 69th Legislature, Regular Session, 1985, and by Section 9, Chapter 966, Acts of the 69th Legislature, Regular Session, 1985."

Acts 1987, 70th Leg., 2nd C.S., ch. 24, conditioned on passage of the 1987 referendum and which incorporated the amendments by Acts 1987, 70th Leg. ch. 54, § 14(a) and Acts 1987, 70th Leg., ch. 90, § 2, in subsec. (a), deleted a listing for member, State Board of Education, and redesignated the remaining subdivisions but failed to take effect upon failure of the 1987 referendum.

Effect of amendment by Acts 1987, 70th Leg., 2nd C.S., ch. 24, and 1987 election results, see note following V.T.C.A. Education Code, § 11.21.

1989 Legislation

The 1989 amendment, in subs. (a)(8), (a)(10), and (a)(12), substituted "850,000" for "2,400,000".

Notes of Decisions

5. Taxation

Davenport v. Campbell, N.D.Tex.1964, 238 F.Supp. 568, [main volume] affirmed 362 F.2d 624.

§ 172.025. Number of Petition Signatures Required

The minimum number of signatures that must appear on the petition authorized by Section 172.021(b) is:

- (1) 5,000, for a statewide office; or
- (2) for a district, county, or precinct office, the lesser of:
 - (A) 500; or
 - (B) two percent of the total vote received in the district, county, or precinct, as applicable, by all the candidates for governor in the most recent gubernatorial general election, unless that number is under 50, in which case the required number of signatures is the lesser of:
 - (i) 50; or
 - (ii) 20 percent of that total vote

Amended by Acts 1987, 70th Leg., ch. 54, § 13(c), eff. Sept. 1, 1987; Acts 1987, 70th Leg., ch. 90, § 3, eff. Sept. 1, 1987; Acts 1987, 70th Leg., ch. 496, § 1, eff. Sept. 1, 1987.

Historical and Statutory Notes

1987 Legislation

Acts 1987, 70th Leg., ch. 54, § 13(c), substituted "Section 172.021(b)" for "Section 172.021", substituted "total vote" for "number of votes" in subd. (2)(B), and substituted "that total vote" for "such votes" in subd. (2)(B)(ii).

Acts 1987, 70th Leg., ch. 90, § 3, made the same changes as Acts 1987, 70th Leg., ch. 54, § 13(c).

Acts 1987, 70th Leg., ch. 496, § 1, inserted "(b)" following "172.021" in the introductory clause, and in subsec. 2(B) substituted "all the candidates" for "the political party's name", twice substituted "50" for "25", substituted "20" for "10", and substituted "that total vote" for "such votes".

Notes of Decisions

Construction and application 1

1. Construction and application

Petition submitted in lieu of filing fee by candidate for district court judge of Harris County

containing 994 signatures was valid, even though 432 signatures did not qualify as signatures of voters eligible to vote for office. *White v. Stanley* (Sup. 1986) 707 S.W.2d 883.

§ 172.026. Restriction on Petition Signer

On signing a petition to be filed under Section 172.021, the signer becomes ineligible to vote in a primary election or participate in a convention of another political party during the voting year in which the primary election is held.

Amended by Acts 1987, 70th Leg., ch. 54, § 13(c), eff. Sept. 1, 1987; Acts 1987, 70th Leg., ch. 90, § 3, eff. Sept. 1, 1987.

Historical and Statutory Notes

1987 Legislation

Acts 1987, 70th Leg., ch. 54, § 13(c) and Acts 1987, 70th Leg., ch. 90, § 3 substituted "to be filed under" for "authorized by".

§ 172.027. Statement on Petition

The following statement must appear at the top of each page of a petition to be filed under Section 172.021: "I know that the purpose of this petition is to entitle (insert candidate's name) to have his or her name placed on the ballot for the office of (insert office title, including any place number or other distinguishing number) for the (insert political party's name) primary election. I understand that by signing this petition I become ineligible to vote in a primary election or participate in a convention of another party, including a party not holding a primary election, during the voting year in which this primary election is held."

Amended by Acts 1987, 70th Leg., ch. 54, § 13(c), eff. Sept. 1, 1987; Acts 1987, 70th Leg., ch. 90, § 3, eff. Sept. 1, 1987; Acts 1997, 75th Leg., ch. 864, § 128, eff. Sept. 1, 1997.

Historical and Statutory Notes

1987 Legislation

Acts 1987, 70th Leg., ch. 54, § 13(c) and Acts 1987, 70th Leg., ch. 90, § 3 substituted "to be filed

under" for "authorized by", and inserted within the statement "including any place number or other distinguishing number".

Notes of Decisions

1. Construction and application

Candidate for political office whose petition failed to state that its purpose was to entitle the candidate to have her name placed on ballot for Democratic Party primary would have her name removed from the Democratic Party primary ballot, even if purpose of election statute was upheld by petition circulators who allegedly told signers that the candidate was in the Democratic Party primary; election statute is specific as to wording required on petition. *O'Neill v. Bentsen* (App. 14 Dist. 1992) 824 S.W.2d 744, motion to file mandamus granted, subsequent mandamus proceeding 834 S.W.2d 335, rehearing overruled.

Writ of mandamus would be issued to require chair of county Democratic Party executive committee and the county Democratic Party executive committee to remove the name of a candidate from the Democratic Party's primary ballot, where the candidate failed to strictly comply with mandatory statutory provisions in Election Code, and thus it was violation of the chair's duty to submit the candidate's name on the list of candidates. *O'Neill v. Bentsen* (App. 14 Dist. 1992) 824 S.W.2d 744, motion to file mandamus granted, subsequent mandamus proceeding 834 S.W.2d 335, rehearing overruled.

§ 172.028. State Chair's Certification of Names for Placement on General Primary Ballot

(a) Except as provided by Subsection (c), the state chair shall certify in writing for placement on the general primary election ballot the name of each candidate who files with the chair an application that complies with Section 172.021(b).

POLITICAL PARTIES

§ 172.029

Title 10

Note 6

(b) Not later than the 57th day before general primary election day, the state chair shall deliver the certification to the county chair in each county in which the candidate's name is to appear on the ballot.

(c) A candidate's name may not be certified:

(1) if, before delivering the certification, the state chair learns that the name is to be omitted from the ballot under Section 172.057; or

(2) for an office for which the candidate's application is invalid under Section 141.033.

(d) A copy of each certification shall be made available on request, without charge, to each newspaper published in this state and to each licensed radio and television station in this state.

Amended by Acts 1986, 69th Leg., 3rd C.S., ch. 14, § 11, eff. Sept. 1, 1987; Acts 1997, 75th Leg., ch. 864, § 129, eff. Sept. 1, 1997.

Historical and Statutory Notes

1986 Legislation

The 1986 amendment, in subsec. (b), changed the delivery deadline from the second Wednesday

in March of the primary election year to the 57th day before general primary election day.

Notes of Decisions

3. Eligibility

Lemons v. State (Civ.App. 1978) 570 S.W.2d 593, [main volume] dismissed, withdrawn, ref. n.r.e.

chairman. LaRouche v. Hannah (Sup. 1992) 822 S.W.2d 632.

4. Mandamus

Candidate was not entitled to mandamus relief compelling Secretary of State to accept his certification as candidate in primary election, where candidate had not yet been certified by state party

Candidate was entitled to mandamus relief compelling state party chairman to certify candidate's name for placement on primary election ballot, where chairman had improperly denied certification on grounds that candidate was a convicted felon. LaRouche v. Hannah (Sup. 1992) 822 S.W.2d 632.

§ 172.029. List of Candidates

(a) For each general primary election, the state chair and each county chair shall prepare a list containing the name of each candidate who files an application for a place on the ballot with the chair, as the name is to appear on the ballot, and containing the candidate's address as shown on the application.

(b) The candidates' names must be grouped on the list according to office.

(c) Not later than the 10th day after the date of the regular filing deadline for candidates' applications, the state chair shall deliver the chair's list to the secretary of state, and each county chair shall deliver a copy of the chair's list to the county clerk, the state chair, and the secretary of state.

(d) A candidate's name must be omitted from the list if, before delivery of the list, the candidate withdraws, dies, or is declared ineligible, or if the candidate's application is determined not to comply with the applicable requirements.

(e) The secretary of state and each county clerk shall retain each list received until the day after general primary election day.

Amended by Acts 1997, 75th Leg., ch. 864, § 130, eff. Sept. 1, 1997.

Notes of Decisions

1. Power and duties of officers

Once county party chair has delivered to the appropriate authorities the list of candidates whose names are to appear on primary election ballot, county chair cannot delete name of a candidate from the ballot on the basis of a deficient application; nor may county chair omit a name from the list once he has delivered the list. Escobar v. Sutherland (App. 8 Dist. 1996) 917 S.W.2d 399.

6. Mandamus

Compliance with section of Texas Election Code setting forth duties of county party chair with respect to certification of the names of candidates for placement on election ballot is for the benefit of the public, thus suggesting those provisions are mandatory, insofar as the certification of names for placement on ballot properly sets electoral stage to determine public's future political representation.

Escobar v. Sutherland (App. 8 Dist. 1996) 917 S.W.2d 399.

SUBCHAPTER C. WITHDRAWAL, DEATH, AND INELIGIBILITY OF CANDIDATE

§ 172.052. Withdrawal From General Primary

(a) A candidate for nomination may not withdraw from the general primary election after the 62nd day before general primary election day.

(b) A withdrawal request for the general primary must be filed with the authority with whom the withdrawing candidate's application for a place on the ballot is required to be filed.

Amended by Acts 1986, 69th Leg., 3rd C.S., ch. 14, § 12, eff. Sept. 1, 1987.

Historical and Statutory Notes

1986 Legislation

The 1986 amendment changed the withdrawal deadline from the 65th to the 62nd day before general primary election day.

Notes of Decisions

Acknowledgment 1

edged. Rosas v. Diamond (App. 8 Dist. 1996) 707 S.W.2d 958.

1. Acknowledgment

Request to have name withdrawn as candidate in general primary election need not be acknowl-

§ 172.054. Extended Filing Deadline

(a) The deadline for filing an application for a place on the general primary election ballot is extended as provided by this section if a candidate who has made an application that complies with the applicable requirements:

(1) dies on or after the fifth day before the date of the regular filing deadline and on or before the 62nd day before general primary election day;

(2) holds the office for which the application was made and withdraws or is declared ineligible on or after the date of the regular filing deadline and on or before the 62nd day before general primary election day; or

(3) withdraws or is declared ineligible during the period prescribed by Subdivision (2), and at the time of the withdrawal or declaration of ineligibility no other candidate has made an application that complies with the applicable requirements for the office sought by the withdrawn or ineligible candidate.

(b) An application for an office sought by a withdrawn, deceased, or ineligible candidate must be filed not later than 6 p.m. of the 60th day before general primary election day. An application filed by mail with the state chair is not timely if received later than 5 p.m. of the 60th day before general primary election day.

(c) An extension of the filing deadline under this section applies only to the primary election of the political party for which the withdrawn, deceased, or ineligible candidate applied for a place on the ballot.

Amended by Acts 1986, 69th Leg., 3rd C.S., ch. 14, § 13, eff. Sept. 1, 1987; Acts 1997, 75th Leg., ch. 864, § 131, eff. Sept. 1, 1997.

Historical and Statutory Notes

1986 Legislation

The 1986 amendment, in subsec. (a)(1) and (2), changed the applicable dates from the 65th to the 62nd day before general primary election day and, in subsec. (b), deleted "6 p.m. of the 15th day after

the date of the withdrawal, death, or declaration of ineligibility, as applicable, or" after "not later than", and deleted " , whichever is earlier" after "primary election day".

§ 172.055. Public Notice of Extended Filing

(a) If the deadline for filing applications is extended, notice of the extended filing shall be given as provided by this section.

(b) The authority with whom the withdrawn, deceased, or ineligible candidate's application was filed shall prepare a notice identifying the candidate and the office for which the filing deadline is extended and stating the extended deadline.

(c) Not later than 24 hours after the candidate withdraws or is declared ineligible or after the authority preparing the notice learns of the candidate's death, as applicable, the authority shall deliver a copy of the notice to:

(1) at least one daily newspaper published in the county or, if none, at least one weekly newspaper published there, if any, for a notice prepared by the county chair;

(2) at least three daily newspapers that regularly maintain a news representative at the State Capitol, for a notice applicable to a statewide office; or

(3) at least one daily newspaper published in each county wholly or partly situated in the district or, if none, at least one weekly newspaper published there, if any, for a notice prepared by the state chair for a district office.

(d) A county or state chair's failure to perform a duty prescribed by this section is cause for the officer's removal by the executive committee over which the chair presides.

Amended by Acts 1986, 69th Leg., 3rd C.S., ch. 14, § 14, eff. Sept. 1, 1987; Acts 1997, 75th Leg., ch. 864, § 132, eff. Sept. 1, 1997.

Historical and Statutory Notes

1986 Legislation

The 1986 amendment, in the introductory paragraph of subsec. (c), reduced the delivery deadline from 48 to 24 hours.

§ 172.056. Supplemental List of Candidates

(a) If the deadline for filing applications is extended, a list shall be prepared, as provided by Section 172.029 for a list of candidates who file during the regular filing period, containing the name of each candidate:

(1) who files an application that complies with the applicable requirements during the extended filing period; and

(2) whose name is not on the list prepared under Section 172.029.

(b) The list prepared under this section is subject to the requirements prescribed by Section 172.029 except that the list must be delivered to the secretary of state, county clerk, and state chair, as applicable, not later than the seventh day after the date of the extended deadline.

Amended by Acts 1997, 75th Leg., ch. 864, § 133, eff. Sept. 1, 1997.

§ 172.057. Withdrawn, Deceased, or Ineligible Candidate's Name Omitted From General Primary Ballot

A candidate's name shall be omitted from the general primary election ballot if the candidate withdraws, dies, or is declared ineligible on or before the 62nd day before general primary election day.

Amended by Acts 1986, 69th Leg., 3rd C.S., ch. 14, § 15, eff. Sept. 1, 1987.

Historical and Statutory Notes

1986 Legislation

The 1986 amendment changed the applicable date from the 65th to the 62nd day before general primary election day.

§ 172.058. Deceased or Ineligible Candidate's Name to Appear on General Primary Ballot

(a) If a candidate who has made an application for a place on the general primary election ballot that complies with the applicable requirements dies or is declared ineligible after the 62nd day before general primary election day, the candidate's name shall be placed on the ballot and the votes cast for the candidate shall be counted and entered on the official election returns in the same manner as for the other candidates.

(b) If the deceased or ineligible candidate receives the vote required for nomination, the appropriate executive committee may select the nominee and certify the nominee's name for placement on the general election ballot as provided by Subchapter B, Chapter 145,¹ for filling a vacancy in a nomination.

(c) In a race in which a runoff is required, if the deceased or ineligible candidate received the vote that would entitle the candidate to a place on the runoff primary ballot or tied for that number of votes, the candidates in the runoff shall be determined in the regular manner but without regard to the votes received by the deceased or ineligible candidate.

Amended by Acts 1986, 69th Leg., 3rd C.S., ch. 14, § 16, eff. Sept. 1, 1987; Acts 1987, 70th Leg., ch. 54, § 24(a), (b), eff. Sept. 1, 1987; Acts 1997, 75th Leg., ch. 864, § 134, eff. Sept. 1, 1997.

¹ Section 1450.031 et seq.

Historical and Statutory Notes

1986 Legislation

The 1986 amendment, in subsec. (a), changed the applicable date from the 65th to the 62nd day before general primary election day.

1986, 69th Leg., 3rd C.S., ch. 14, § 16, which amended subsec. (a) of this section and was to become effective Sept. 1, 1987.

1987 Legislation

The 1987 amendatory act, to make a technical correction, rewrote subsec. (a), and repealed Acts

§ 172.059. Withdrawal From Runoff Primary

(a) A candidate for nomination may not withdraw from the runoff primary election after 5 p.m. of the 10th day after general primary election day.

(b) A withdrawal request for the runoff primary must be filed with the state chair, for a statewide or district office, or with the county chair, for a county or precinct office.

(c) If a runoff candidate withdraws, the remaining candidate is the nominee and the runoff election for that office is not held.

Amended by Acts 1997, 75th Leg., ch. 864, § 135, eff. Sept. 1, 1997.

§ 172.061. Candidate for Party Office

(a) Except for Sections 172.058(b), 172.059(c), and 172.060(b), this subchapter applies to a candidate for county chair or precinct chair.

(b) If a runoff candidate for county chair or precinct chair withdraws, the remaining candidate is considered to be elected and the runoff election for that office is not held.

Amended by Acts 1997, 75th Leg., ch. 864, § 136, eff. Sept. 1, 1997.

SUBCHAPTER D. BALLOT

§ 172.081. Primary Committee

(a) Except as provided by Subsection (b), a primary committee is established in each county having a county executive committee. The primary committee consists of:

(1) the county chair; and

(2) four other members of the county executive committee, appointed by the county chair subject to the executive committee's approval.

(b) The county executive committee by resolution may provide that the primary committee consist of more or fewer than five members or that a primary committee not be established. If a primary committee is not established, the county chair shall perform the duties of the

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primary committee prescribed by this chapter unless the county executive committee designates another member of the committee for that purpose.

(c) The county chair serves as chair of the primary committee.

Amended by Acts 1997, 75th Leg., ch. 864, § 137, eff. Sept. 1, 1997.

§ 172.082. Order of Names on General Primary Ballot: Regular Drawing

(a) The order of the candidates' names on the general primary election ballot for each county shall be determined by a drawing.

(b) The county executive committee shall conduct the drawing unless it provides by resolution that the drawing be conducted by the primary committee.

(c) The drawing shall be conducted at the county seat not later than the 53rd day before general primary election day.

(d) Each candidate affected by a drawing is entitled to be present or have a representative present at the drawing.

(e) The county chair shall post notice of the date, hour, and place of the drawing for at least 24 consecutive hours immediately before the drawing begins. The notice shall be posted on the bulletin board used for posting notice of meetings of the commissioners court.

Amended by Acts 1986, 69th Leg., 3rd C.S., ch. 14, § 17, eff. Sept. 1, 1987; Acts 1997, 75th Leg., ch. 864, § 138, eff. Sept. 1, 1997.

Historical and Statutory Notes

1986 Legislation

The 1986 amendment, in subsec. (c), substituted "not later than the 53rd day before general pri-

mary election day" for "on the third Monday in March of the primary election year", and added subsec. (e).

§ 172.083. Review and Approval of Ballot by Primary Committee

Before having the official ballots for a general primary election printed, the county chair shall submit the format for the official ballot to the primary committee for its review and approval.

Amended by Acts 1997, 75th Leg., ch. 864, § 139, eff. Sept. 1, 1997.

§ 172.084. Order of Names on Runoff Primary Ballot

(a) Except as provided by this section, the order of the candidates' names on the runoff primary election ballot for each county shall be determined by a drawing conducted in the same manner as the regular drawing for position on the general primary election ballot.

(b) The drawing for candidates for county and precinct offices shall be conducted at the place at which the local canvass of the general primary election is conducted, immediately following the canvass.

(c) The primary committee shall conduct the drawing for candidates for statewide and district offices at the county seat at a time designated by the county chair.

(d) The county chair shall post notice of the date and hour of the drawing for candidates for statewide and district offices:

(1) for at least 24 consecutive hours immediately before the drawing begins; and

(2) not earlier than the day after the date the state executive committee convenes to canvass the results of the general primary.

(e) The notice required by Subsection (d) shall be posted on the bulletin board used for posting notice of meetings of the commissioners court.

Amended by Acts 1997, 75th Leg., ch. 864, § 140, eff. Sept. 1, 1997.

§ 172.088. Voter Petition for Referendum

(a) Voters by petition may require that a proposal to include a demand for specific legislation or any other matter in a political party's platform or resolutions be submitted to a vote in the party's general primary election by placement on the general primary election ballot.

(b) Subject to Subsection (c), a petition under this section must satisfy the requirements prescribed by Section 141.062 for a candidate's petition and must state the proposal that is to be submitted. The petition is otherwise subject to the applicable provisions of Subchapter C, Chapter 141,¹ except as provided by this section.

(c) A political party by rule may provide for restricting petition signers on the basis of party alignment or preference.

(d) The petition must be filed with the state chair of the political party holding the primary to which the petition applies before the date of the regular filing deadline for candidates' applications for a place on the primary ballot.

(e) The *minimum* number of signatures that must appear on the petition is five percent of the total vote received by all candidates for governor in the party's most recent gubernatorial general primary election.

(f) A signer's voter registration is not required to be in any particular territory.

(g) The state executive committee shall prescribe the wording of the proposition submitting a proposal.

Amended by Acts 1997, 75th Leg., ch. 864, § 141, eff. Sept. 1, 1997.

¹ Section 141.061 et seq.

§ 172.089. Order of Party Offices on Ballot

The party offices of county chair and precinct chair shall be listed on the primary election ballot after the public offices with the office of county chair listed first.

Amended by Acts 1997, 75th Leg., ch. 864, § 142, eff. Sept. 1, 1997.

§ 172.090. Separate Ballot for Office of Precinct Chair

(a) In a primary election in which election precincts are consolidated, the county executive committee may provide by resolution, order, or other official action for voting in a consolidated precinct by separate paper ballot for the office of precinct chair.

(b) The separate paper ballot for precinct chair must conform to the applicable standards governing regular paper ballots, except that the ballot shall be limited to the office of precinct chair.

(c) The secretary of state shall prescribe the form of the ballot for precinct chair consistent with this section.

Amended by Acts 1997, 75th Leg., ch. 864, § 143, eff. Sept. 1, 1997.

SUBCHAPTER E. CONDUCT OF ELECTION

§ 172.1111. Posting Notice of Precinct Convention Required

(a) Before the opening of the polls, the presiding judge shall post at each outside door through which a voter may enter the building in which the polling place is located a written notice in bold print of the date, hour, and place for convening the precinct convention.

(b) The judge is not required to use an officially prescribed form for the notice.

(c) The notice must remain posted continuously through election day.

Added by Acts 1987, 70th Leg., ch. 472, § 44, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 1349, § 61, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1350, § 8, eff. Sept. 1, 1997.

Historical and Statutory Notes

1989 Legislation

A former section 172.1111 as added by Acts 1987, 70th Leg., ch. 440, § 2 was repealed by Acts 1989, 71st Leg., ch. 2, § 7.10, eff. Aug. 28, 1989 to conform to its implied repeal by Acts 1987, 70th

Leg., ch. 472, § 44 which added another § 172.1111.

Another section 172.1111 as added by Acts 1987, 70th Leg., ch. 479, § 4 was renumbered as § 172.1112.

§ 172.1112. Notice of Election

(a) The county chair shall post a notice of the election and a notice of consolidated precincts, if applicable, in the manner prescribed by Section 4.003(b) for general and special

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elections. The notice of the election shall be posted on the bulletin board used for posting notice of meetings of the commissioners court.

(b) The requirements prescribed by Section 4.004 for the contents of the notice of a general or special election apply to the notice of election required by Subsection (a).

Added by Acts 1987, 70th Leg., ch. 479, § 4, eff. Sept. 1, 1987. Renumbered from § 172.1111 by Acts 1989, 71st Leg., ch. 2, § 7.11, eff. Aug. 23, 1989. Amended by Acts 1997, 75th Leg., ch. 864, § 144, eff. Sept. 1, 1997.

§ 172.112. Write-in Voting

Write-in voting in a primary election is not permitted except in the general primary election for the offices of county chair and precinct chair.

Amended by Acts 1997, 75th Leg., ch. 864, § 145, eff. Sept. 1, 1997.

Library References

Conduct of elections, write-in voting, see Brooks,
35 Texas Practice § 11.15.

§ 172.113. Unofficial Tabulation of Precinct Results

(a) The county chair shall prepare the unofficial tabulation of precinct results.

(b) When the general custodian of election records for the primary opens the precinct election records from the various polling places, the custodian shall deliver the precinct returns to the county chair for the purpose of preparing the unofficial tabulation.

(c) When the county chair receives precinct returns from the general custodian, the county chair shall enter the appropriate information on the unofficial tabulation and immediately return the precinct returns to the custodian.

(d) The county chair shall make the periodic announcements of the current state of the tabulation.

(e) On completing the tabulation, the county chair shall deliver it to the general custodian.

(f) A person employed to assist in the preparation of the unofficial tabulation is entitled to compensation at the same rate as an election clerk serving in the election.

Amended by Acts 1997, 75th Leg., ch. 864, § 146, eff. Sept. 1, 1997.

§ 172.1141. List of Registered Voters for Convention

At the same time the acceptance of each voter for voting in the general primary election is indicated on the precinct list of registered voters furnished for use in the election, the acceptance of the voter shall also be indicated on the list furnished for use in the party's conventions.

Added by Acts 1987, 70th Leg., ch. 501, § 2, eff. Sept. 1, 1987.

§ 172.115. Disposition of List of Registered Voters

(a) Subject to Subsection (b), the voter registrar shall preserve each precinct list of registered voters that is used for a primary election until the end of the voting year in which the primary election is held.

(b) The registrar shall return each list that is to be used in a subsequent primary election to the authority responsible for distributing the election supplies not earlier than the fourth day before the date it is needed for the subsequent primary.

(c) The presiding judge shall retain and provide at the appropriate time the list of registered voters to be used in the party's conventions.

Amended by Acts 1987, 70th Leg., ch. 54, § 12(b), eff. Sept. 1, 1987; Acts 1987, 70th Leg., ch. 501, § 3, eff. Sept. 1, 1987.

Historical and Statutory Notes

1987 Legislation

Acts 1987, 70th Leg., ch. 54, § 12(b), to conform this section to Acts 1985, 69th Leg., ch. 966 [see italicized note under §§ 18.001 and 66.063, main volume], substituted the title "voter registrar" for

"general custodian of election records", and repealed Acts 1985, 69th Leg., ch. 966.

Acts 1987, 70th Leg., ch. 501, § 3 added subsec. (c).

§ 172.116. Local Canvass

(a) The county executive committee shall canvass the precinct election returns for the county.

(b) The committee shall convene to conduct the local canvass at the county seat not earlier than 6 p.m. on the first Thursday or later than 1 p.m. on the first Friday after election day at the hour specified by the county chair.

(c) Except as provided by this section, the procedure for conducting the canvass is the same as that prescribed by this code for a local canvass of a general election.

(d) The tabulation of results must be a separate document.

(e) Not later than the 20th day after the date the local canvass is completed, the county chair shall deliver the committee's tabulation to the general custodian of election records, who shall preserve it for the period for preserving the precinct election records.

(f) The local canvass is open to the general public.

(g) The official result of the primary election, except for offices canvassed at the state level, is determined from the local canvass of precinct returns.

Amended by Acts 1986, 69th Leg., 3rd C.S., ch. 14, § 18, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 275, § 1, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 723, § 66, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 864, § 147, eff. Sept. 1, 1997.

Historical and Statutory Notes

1986 Legislation

The 1986 amendment, in subsec. (b), changed the canvass day from the first Tuesday to the first Friday after election day.

§ 172.117. Certification of Nominees for County and Precinct Offices for Placement on General Election Ballot

(a) The county chair shall certify in writing for placement on the general election ballot the name and address of each primary candidate who is nominated for a county or precinct office.

(b) Not later than the 20th day after the date the local canvass is completed, the county chair shall deliver the certification to the authority responsible for having the official general election ballot prepared.

(c) A candidate's name may not be certified if, before delivering the certification, the county chair learns that the name is to be omitted from the ballot under Section 145.035.

Amended by Acts 1997, 75th Leg., ch. 864, § 148, eff. Sept. 1, 1997.

Notes of Decisions

3. Injunction

Lemons v. State (Civ.App. 1978) 570 S.W.2d 593, [main volume] dismissed, withdrawn, ref. n.r.e.

§ 172.118. Notice of Persons Elected as Party Officers

(a) Not later than the 20th day after the date the local canvass is completed, the county chair shall deliver written notice to the state chair and to the county clerk of the names of the persons elected as county chair and precinct chairs for the county.

(b) The notice must include each party officer's address and each precinct chair's precinct number.

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(c) The county clerk shall preserve the notice until the county clerk receives notice of the party officers elected at the succeeding primary election.

(d) On request of the secretary of state, the state chair shall deliver to the secretary written notice of the names and addresses of the party's county chairs.

Amended by Acts 1997, 75th Leg., ch. 864, § 149, eff. Sept. 1, 1997.

§ 172.119. County Election Returns

(a) The county chair shall prepare county election returns for the statewide and district offices voted on in a primary election in the same manner as the county returns for a general election are prepared by the county clerk except that separate returns for the offices of governor and lieutenant governor are not prepared.

(b) The county chair shall deliver the county returns and retain a copy in the same manner as the county returns for a general election are delivered and retained by the county clerk except that the delivery shall be made to the state chair.

Amended by Acts 1997, 75th Leg., ch. 864, § 150, eff. Sept. 1, 1997.

§ 172.120. State Canvass

(a) The state executive committee shall canvass the county election returns.

(b) The state executive committee shall convene to conduct the state canvass for the general primary election on the second Wednesday after general primary election day. Not later than the second Saturday after runoff primary election day, the committee shall convene at the call of the state chair to conduct the state canvass of the runoff primary election.

(c) In a primary election year and before general primary election day, the state executive committee by written resolution shall determine the place for conducting the state canvass.

(d) Except as provided by this section, the procedure for conducting the canvass is the same as that prescribed by this code for a canvass by the governor.

(e) A separate tabulation of results for the offices of governor and lieutenant governor is not made.

(f) Not later than the 20th day after the date the state canvass is completed, the state chair shall deliver the committee's tabulation to the secretary of state, who shall preserve it for the period for preserving the precinct election records.

(g) The state canvass is open to the general public.

(h) The official result of the primary election for offices canvassed by the state executive committee is determined from its canvass of the county returns.

Amended by Acts 1986, 69th Leg., 3rd C.S. ch. 14, § 19, eff. Sept. 1, 1987; Acts 1987, 70th Leg., ch. 54, § 21(a), (b), eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 163, § 3, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 864, § 151, eff. Sept. 1, 1997.

Historical and Statutory Notes

1986 Legislation

The 1986 amendment, in subsec. (b), changed the canvass day from the second Thursday to the second Saturday after general primary election day.

1986, 67th Leg., 3rd C.S., ch. 14, substituted "Wednesday" for "Thursday" in subsec. (b), and repealed Acts 1986, 69th Leg., 3rd C.S., ch. 14, § 19, which amended subsec. (b) of this section and was to become effective Sept. 1, 1987.

1987 Legislation

The 1987 amendatory act, to correct a direct conflict between certain dates prescribed by Acts

1989 Legislation

The 1989 amendment in subsec. (d) substituted "governor" for "state board of canvassers".

§ 172.121. Certification of Candidates for Statewide and District Offices for Placement on Runoff Ballot

(a) The state chair shall certify in writing for placement on the runoff primary election ballot the name of each general primary candidate for a statewide or district office who is to be a candidate in the runoff.

(b) The state chair shall deliver the certification to the county chair in each affected county as soon as practicable after the state canvass of the general primary election is completed.

Amended by Acts 1997, 75th Leg., ch. 864, § 152, eff. Sept. 1, 1997.

§ 172.122. Certification of Nominees for Statewide and District Offices to Secretary of State

(a) The state chair shall certify in writing as the party's nominee the name and address of each primary candidate who is nominated for a statewide or district office.

(b) Not later than the 20th day after the date the state canvass is completed, the state chair shall deliver the certification to the secretary of state.

Amended by Acts 1997, 75th Leg., ch. 864, § 153, eff. Sept. 1, 1997.

§ 172.123. Entering Primary Results in Election Register

(a) The county clerk shall enter the precinct results for the primary election in the election register maintained for the commissioners court.

(b) The secretary of state shall enter the primary election results for statewide and district offices in the election register maintained for the governor.

Amended by Acts 1989, 71st Leg., ch. 163, § 4, eff. Sept. 1, 1989.

Historical and Statutory Notes

1989 Legislation

The 1989 amendment in subsec. (b) substituted "governor" for "state board of canvassers".

§ 172.124. Reporting Precinct Results to Secretary of State

(a) For each primary election, the county chair shall prepare a report of the number of votes, including early voting votes, received in each county election precinct by each candidate for a statewide office or the office of United States representative, state senator, or state representative, as provided by Section 67.017 for the report of precinct results for a general election.

(b) The county chair shall deliver the report to the secretary of state not later than the 30th day after primary election day.

(c) Except as otherwise provided by this section, the report is subject to the requirements prescribed by Section 67.017 for the report prepared for a general election.

Amended by Acts 1987, 70th Leg., ch. 54, § 2(d), eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 114, § 13, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 203, § 2.64; Acts 1991, 72nd Leg., ch. 554, § 35, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 864, § 154, eff. Sept. 1, 1997.

Historical and Statutory Notes

1987 Legislation

The 1987 amendatory act, to conform this section to Acts 1985, 69th Leg., ch. 560 [see italicized note, main volume], in subsec. (a) inserted "or the office of United States representative, state senator, or state representative," and deleted "state-wide office" preceding "precinct results", and repealed Acts 1985, 69th Leg., ch. 560.

1989 Legislation

The 1989 amendment in subsec. (a) inserted "including absentee votes,".

1991 Legislation

Both Acts 1991, 72nd Leg., ch. 203, § 2.64, and Acts 1991, 72nd Leg., ch. 554, § 35, in subsec. (a) substituted "early voting" for "absentee".

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 141.034.

Cross References

State payment of estimated primary expenses, withholding of final installment, see V.T.C.A., Election Code § 173.083.

§ 172.125. Additional Procedure for Accepting Voters in Runoff

(a) For a runoff primary election, the voter registrar shall enter on the list of registered voters a notation beside each voter's name indicating the preceding party primary for which the voter was accepted for voting, if any.

(b) An election officer at a runoff primary election polling place shall determine whether the name of a voter offering to vote is noted on the list as having been accepted for voting in another party's primary. If the voter's name is so noted, the voter may not be accepted for voting at the runoff unless the voter executes an affidavit stating that the voter did not vote in the primary or participate in a convention of another party during the same voting year. Added by Acts 1993, 73rd Leg., ch. 728, § 67, eff. Sept. 1, 1993.

§ 172.126. Joint Primaries Authorized

(a) The primary elections in a county may be conducted jointly at the regular polling places designated for the general election for state and county officers. The county clerk shall supervise the overall conduct of the joint primary elections. This section applies to the conduct of joint primary elections notwithstanding and in addition to other applicable provisions of this code. The decision to conduct a joint primary election must be made by majority vote of the full membership of the commissioners court and with the unanimous approval of the county clerk and the county chair of each political party required to nominate candidates by primary election.

(b) The county clerk shall determine whether to consolidate election precincts under Section 42.009 and shall designate the location of the polling place in a consolidated precinct. To the extent possible, a polling place shall be designated that will accommodate the precinct conventions of each political party. If a polling place, whether for a regular or consolidated precinct, is not suitable for more than one precinct convention, the polling place may be used by the party whose candidate for governor received the most votes in the county in the most recent gubernatorial general election.

(c) One set of election officers shall conduct the primary elections at each polling place. Not later than the second Monday in December preceding the primary elections, each county chair shall deliver to the county clerk a list of the names of the election judges and clerks for that party. The presiding judge of each party, or alternate judge if applicable, serves as a co-judge for the precinct. The county clerk shall appoint the election clerks in accordance with rules prescribed by the secretary of state. The secretary of state shall prescribe the maximum number of clerks that may be appointed for each precinct. The early voting ballot board and any central counting station shall also be composed of and administered by one set of election officers that provides representation for each party, and the secretary of state by rule shall prescribe procedures consistent with this subsection for the appointment of those officers.

(d) Each co-judge has the law enforcement duties and powers provided under Section 32.075. Each co-judge has the exclusive authority to conduct challenges on the eligibility of voters, tabulate the votes, and deliver the election returns in the primary of the party with which that judge is affiliated or aligned.

(e) A written certification of the candidates' names that are to appear on the primary ballot shall be delivered to the county clerk in accordance with rules prescribed by the secretary of state.

(f) The county clerk shall determine the ballot format and voting system for each election precinct and shall procure the election equipment and supplies.

(g) A separate set of ballot boxes or other suitable containers approved by the secretary of state shall be used for each party's primary, except that one set of ballot boxes or other containers may be used in a joint primary using an electronic voting system in which the ballots are deposited by the voters directly into a unit of automatic tabulating equipment. The lists of registered voters and the voters' registration certificates shall be marked and stamped to show the appropriate party affiliation for each voter. A separate list of registered voters shall be used for each party's primary. The secretary of state by rule shall prescribe requirements to ensure that one party's ballot is readily distinguished from another's, which may include the use of different colors of ink.

(h) Separate election returns shall be prepared for each party's primary and shall be canvassed as provided by this code.

(i) The secretary of state by rule shall prescribe the procedures necessary to implement this section to ensure the orderly and proper administration of joint primary elections. Added by Acts 1997, 75th Leg., ch. 1349, § 62, eff. Sept. 1, 1997.

CHAPTER 173. PRIMARY ELECTION FINANCING

SUBCHAPTER A. PRIMARY ELECTION EXPENSES GENERALLY		Section	
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173.010.	Furnishing Rules.	173.082.	Review of Statement; Approval; Notice.
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SUBCHAPTER B. PRIMARY FUND		173.0831.	State Payment of Start-up Primary Funds.
173.031.	County Primary Fund.	173.084.	Expense Report by Party.
173.032.	State Primary Fund.	173.085.	State Payment of Excess Primary Expenses.
173.033.	Use of Primary Fund.	173.0851.	Disposition of Surplus in Primary Fund.
173.035.	Audit by Secretary of State.	173.086.	Challenge of Disbursement of State Funds.
173.036.	State Funds for Audit Requested by Party.	173.087.	Liability of County Chair and County Executive Committee.
173.037.	Deleted.	173.088.	Availability of Guidelines.
SUBCHAPTER C. DISPOSITION OF FILING FEES			
173.061.	Fee Paid to County Chair.		

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

SUBCHAPTER A. PRIMARY ELECTION EXPENSES GENERALLY

§ 173.001. State Funds for Primary Authorized

(a) Subject to legislative appropriation, state funds may be spent as provided by this chapter to pay expenses incurred by a political party in connection with a primary election.

(b) Expenses incurred in connection with a convention of a political party or other party activity that is not necessary for the holding of a primary election may not be paid with state funds.

(c) The secretary of state may spend state funds appropriated for primary finance to pay salaries and other necessary expenses in connection with the administration of primary elections.

(d) If the amount of the funds appropriated for the financing of primary elections is insufficient to satisfy the requests for those funds made under this code, the secretary of state may distribute the amount of the appropriation on a pro rata basis. Each party executive committee is entitled to a proportionate share of that amount according to that committee's percentage of the total amount requested.

Amended by Acts 1987, 70th Leg., ch. 54, § 12(c), eff. Sept. 1, 1987.

Historical and Statutory Notes

1987 Legislation

The 1987 amendatory act, to conform this section to Acts 1985, 69th Leg., ch. 966 [see italicized

note, main volume], added subsec. (d), and § 14(b) of the amendatory act repealed Acts 1985, 69th Leg., ch. 966.

§ 173.003. Expenses Incurred by County

Except as otherwise provided by law, the county shall pay all the expenses incurred in connection with early voting in a primary election, except expenses relating to the printing of

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early voting ballots, and any other expenses incurred by a county authority in connection with a primary election.

Amended by Acts 1987, 70th Leg., ch. 472, § 45, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 203, § 2.65; Acts 1991, 72nd Leg., ch. 554, § 36, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 141.034.

Library References

Party nominations, see Brooks, 35 Texas Practice § 11.21.

§ 173.004. State Compensation of County Chair and Secretary of County Executive Committee

(a) The total amount paid with state funds in a particular primary election year for the combined compensation of a county chair and the secretary, if any, of the county executive committee presided over by the chair may not be:

- (1) less than \$300; or
- (2) more than the lesser of
 - (A) \$8,000; or
 - (B) five percent of the total expenses incurred by the political party in holding primary elections in the county that year, exclusive of the combined annual compensation of the county chair and secretary.

(b) The status of a county executive committee's secretary as a committee member does not affect the applicability of this section.

Amended by Acts 1997, 75th Leg., ch. 864, § 155, eff. Sept. 1, 1997.

§ 173.008. Limiting State Compensation for Election Personnel

(a) The secretary of state may limit the number of election clerks in a primary election whose service is payable with state funds.

(b) The secretary of state may limit the total state compensation payable to persons employed to assist a county chair in connection with a primary election.

(c) Rules adopted under this section must provide for state compensation for sufficient personnel to properly hold the primary, taking into account the number of registered voters, number of votes cast in previous primary elections, method of voting, and other relevant factors, but in no case may state compensation be limited to fewer than two clerks for each election precinct.

(d) State funds may be paid in excess of the limits prescribed under this section if the secretary of state determines good cause exists for the additional state compensation.

Amended by Acts 1997, 75th Leg., ch. 864, § 156, eff. Sept. 1, 1997.

Administrative Code References

Number of election workers per polling location, see 1 TAC § 81.119.

§ 173.010. Furnishing Rules

During November preceding each primary election year, the secretary of state shall deliver to the state chair and each county chair of each political party holding a primary election a current set of the rules adopted under this subchapter. If a rule or amendment of a rule is adopted after delivery of the set, the secretary shall deliver a copy of the rule or amendment not later than the 10th day after the date of its adoption.

Amended by Acts 1986, 69th Leg., 3rd C.S., ch. 14, § 20, eff. Sept. 1, 1987; Acts 1997, 75th Leg., ch. 864, § 157, eff. Sept. 1, 1997.

Historical and Statutory Notes

1986 Legislation

The 1986 amendment substituted "November preceding" for "January of".

§ 173.011. Financing of Joint Primary Elections Generally

(a) This section applies to the financing of joint primary elections notwithstanding and in addition to other applicable provisions of this code.

(b) Any surplus remaining in a county primary fund shall be remitted to the county clerk immediately after the final payment from the fund of the necessary expenses for holding the primary elections for that year, but not later than July 1 following the applicable primary election. The surplus in the primary fund shall be remitted regardless of whether state funds were requested by the chair. Any surplus primary funds received by the county clerk under this subsection may be used only for paying the remaining expenses of the joint primary election.

(c) The secretary of state shall adopt rules, consistent with this chapter to the extent practicable, that are necessary for the fair and efficient financing of joint primary elections.

Added by Acts 1997, 75th Leg., ch. 1349, § 63, eff. Sept. 1, 1997.

SUBCHAPTER B. PRIMARY FUND

§ 173.031. County Primary Fund

(a) A county primary fund is created for each county executive committee of a political party holding a primary election.

(b) The county primary fund consists of:

- (1) the filing fees required to be deposited in the fund under Subchapter C;
- (2) the state funds paid to the county chair under Subchapter D;
- (3) the contributions to the county executive committee for the purpose of defraying primary election expenses; and
- (4) the income earned by the fund.

Amended by Acts 1997, 75th Leg., ch. 864, § 158, eff. Sept. 1, 1997.

Historical and Statutory Notes

1987 Legislation

Acts 1985, 69th Leg., ch. 966 [see italicized note, main volume] was repealed by Acts 1987, 70th Leg., ch. 54, § 14(b).

Library References

Party nominations, see Brooks, 35 Texas Practice § 11.21.

§ 173.032. State Primary Fund

(a) A state primary fund is created for the state executive committee of each political party holding a primary election.

(b) The state primary fund consists of:

- (1) the filing fees required to be deposited in the fund under Subchapter C;¹
- (2) the state funds paid to the state chair under Subchapter D;²
- (3) the contributions to the state executive committee for the purpose of defraying primary election expenses; and
- (4) the income earned by the fund.

Amended by Acts 1997, 75th Leg., ch. 864, § 159, eff. Sept. 1, 1997.

¹ Section 173.061 et seq.
² Section 173.081 et seq.

§ 173.033. Use of Primary Fund

- (a) The county primary fund shall be used to pay expenses incurred by the county chair or county executive committee in connection with a primary election.
- (b) The state primary fund shall be used to pay expenses incurred by the state chair or state executive committee in connection with a primary election.
- (c) A primary fund may not be used for any other purpose.

Amended by Acts 1997, 75th Leg., ch. 864, § 160, eff. Sept. 1, 1997.

Historical and Statutory Notes

1987 Legislation

Acts 1985, 69th Leg., ch. 966 [see italicized note, main volume] was repealed by Acts 1987, 70th Leg., ch. 54, § 14(b).

§ 173.035. Audit by Secretary of State

- (a) The secretary of state may have a primary fund audited at any time.
- (b) The expenses of an audit under this section shall be paid from funds appropriated for the administration of primary elections.

Renumbered from § 173.036 and amended by Acts 1987, 70th Leg., ch. 54, § 12(d), eff. Sept. 1, 1987.

§ 173.036. State Funds for Audit Requested by Party

- (a) The secretary of state may approve an expenditure of state funds for an audit of the state primary fund on request of the state chair or a county primary fund on request of a county chair.
- (b) On receipt of written certification of the amount approved by the secretary of state for an audit, the comptroller of public accounts shall issue a warrant for that amount payable to the state or county chair making the request.
- (c) An audit conducted with state funds approved under this section is subject to the conditions imposed by the secretary of state.

Renumbered from § 173.037 and amended by Acts 1987, 70th Leg., ch. 54, § 12(d), eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 864, § 161, eff. Sept. 1, 1997.

Historical and Statutory Notes

For text of provisions formerly contained in § 173.036, see, now, § 172.035.

§ 173.037. Deleted by Acts 1987, 70th Leg., ch. 54, § 12(d), eff. Sept. 1, 1987

Historical and Statutory Notes

See, now, § 173.036.

SUBCHAPTER C. DISPOSITION OF FILING FEES

§ 173.061. Fee Paid to County Chair

The county chair shall deposit in the county primary fund each filing fee accompanying an application for a place on the ballot filed with the county chair.
Amended by Acts 1997, 75th Leg., ch. 864, § 162, eff. Sept. 1, 1997.

§ 173.062. Fee Paid to State Chair Allocated Among County Committees

(a) The state chair shall allocate the filing fee for a district office accompanying an application for a place on the ballot filed with the state chair during the regular filing period among the county executive committees serving the counties comprising the district.

§ 173.062

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(b) Each committee's allocation is equal to the quotient obtained by dividing the amount of the filing fee by the number of counties wholly or partly in the district.

(c) The state chair shall deliver each committee's allocation to the county chair not later than the 10th day after the date of the regular filing deadline.

(d) On receipt of the allocation, the county chair shall deposit it in the county primary fund.
Amended by Acts 1997, 75th Leg., ch. 864, § 163, eff. Sept. 1, 1997.

§ 173.063. Fee Retained by State Chair

The state chair shall deposit in the state primary fund each filing fee accompanying an application for a place on the ballot filed with the state chair:

- (1) for a statewide office; or
- (2) for a district office if the application is filed after the regular filing deadline.

Amended by Acts 1997, 75th Leg., ch. 864, § 164, eff. Sept. 1, 1997.

§ 173.064. Report of Fees by State Chair

(a) The state chair shall prepare a report of the filing fees accompanying applications for a place on the ballot filed with the state chair during the regular filing period.

(b) The report must include, for each office for which an application is filed, the total number of applications and the total amount of filing fees paid.

(c) The state chair shall deliver the report to the secretary of state not later than the 10th day after the date of the regular filing deadline.

Amended by Acts 1997, 75th Leg., ch. 864, § 165, eff. Sept. 1, 1997.

SUBCHAPTER D. STATE FINANCING

§ 173.081. Statement of Estimated Primary Expenses

(a) Regardless of whether state funds are requested for paying primary expenses, a written statement of estimated expenses to be incurred in connection with a primary election shall be submitted to the secretary of state by:

- (1) the county chair, for expenses of the county chair or county executive committee; or
- (2) the state chair, for expenses of the state chair or state executive committee.

(b) The statement must:

- (1) contain an itemized estimate, prepared by the authority submitting the statement, of the primary expenses to be incurred and a statement by the authority of whether state funds are requested; and
- (2) be sworn to by the authority submitting the statement.

(c) A statement for a general primary election must also:

(1) state the amount of:

(A) the primary candidates' filing fees required to be deposited in the county primary fund if the statement is submitted by a county chair, or in the state primary fund if the statement is submitted by the state chair, that have been received by the authority submitting the statement; and

(B) the contributions to the county executive committee if the statement is submitted by a county chair, or to the state executive committee if the statement is submitted by the state chair, that:

- (i) are for the purpose of defraying primary election expenses; and
- (ii) have not been included in a report filed under Section 173.084 for a previous primary election year; and

(2) be submitted not later than the 45th day before general primary election day.

(d) The information required by Subsection (c)(1) must be current as of the 10th day after the date of the regular filing deadline for a candidate's application for a place on the primary ballot.

(e) A statement for a runoff primary election must be submitted not later than the 10th day after general primary election day.

(f) A statement submitted by a county chair must also include a notice of the county election precincts to be consolidated for the election, if any.

Amended by Acts 1987, 70th Leg., ch. 54, § 12(e), eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 114, § 14, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 864, § 166, eff. Sept. 1, 1997.

Historical and Statutory Notes

1987 Legislation

The 1987 amendatory act, to conform this section to Acts 1985, 69th Leg., ch. 966 [see italicized note under § 173.083, main volume], rewrote the

section, and § 14(b) of the amendatory act repealed Acts 1985, 69th Leg., ch. 966.

1989 Legislation

The 1989 amendment added subsec. (f).

§ 173.082. Review of Statement; Approval; Notice

(a) On receipt of a statement of estimated primary election expenses, the secretary of state shall review the statement to determine which items of estimated expense and the amounts of those items to approve.

(b) The secretary of state shall approve an item of estimated expense if the secretary determines that it is reasonably necessary for the proper holding of the primary election. If the secretary determines that the entire estimated amount of the item is not reasonably necessary, the secretary shall approve the item in the reduced amount that the secretary determines is appropriate.

(c) The secretary of state shall promptly notify the authority submitting the statement of each item of estimated expense not approved or approved in a reduced amount.

(d) An item or part of an item of estimated primary election expense that is not approved by the secretary of state may not be paid with primary funds.

(e) Expenses incurred in connection with an application for a place on the ballot for the office of precinct chair filed before the 30th day before the date of the regular filing deadline may not be paid with state funds.

Amended by Acts 1987, 70th Leg., ch. 54, § 12(e), eff. Sept. 1, 1987; Acts 1997, 75th Leg., ch. 864, § 167, eff. Sept. 1, 1997.

Historical and Statutory Notes

1987 Legislation

The 1987 amendatory act, to conform this section to Acts 1985, 69th Leg., ch. 966 [see italicized note under § 173.083, main volume], substituted references to a statement of estimated primary

election expenses for references to request for state funds, in subsec. (d) substituted "primary funds" for "state funds", and § 14(b) of the amendatory act repealed Acts 1985, 69th Leg., ch. 966.

§ 173.083. State Payment of Estimated Primary Expenses

(a) The amount of estimated primary election expenses payable with state funds under this section is equal to:

- (1) for a general primary election, the difference obtained by subtracting the sum of the filing fees and contributions reported in the statement of estimated primary election expenses from the total amount of estimated general primary expenses approved by the secretary of state under Section 173.082; and
- (2) for a runoff primary election, the total amount of estimated runoff primary expenses approved by the secretary.

(b) State payment of the estimated primary election expenses shall be made in installments as follows:

(1) the initial installment for the expenses of a general primary is equal to three-fourths, or three-fifths if the secretary of state determines that figure to be more efficient, of the amount of estimated general primary expenses payable with state funds;

(2) the initial installment for the expenses of a runoff primary is equal to three-fourths, or three-fifths if the secretary of state determines that figure to be more efficient, of the amount of estimated runoff primary expenses payable with state funds; and

(3) the final installment is equal to the difference obtained by subtracting the total of the installments paid under Subdivisions (1) and (2) from the total of the actual general and runoff primary election expenses payable with state funds.

(c) After determining the amount of estimated primary expenses to approve under Section 173.082 for a general or runoff primary, the secretary of state shall calculate the amount of the installment payable under Subsection (b)(1) or (2), as applicable. The secretary shall then prepare and deliver to the comptroller of public accounts a certified statement indicating the amount of the installment, the total amount of estimated general or runoff primary expenses payable with state funds, and the name of the county or state chair who submitted the statement of estimated primary election expenses.

(d) The final installment may not be paid until a report is filed in compliance with Section 173.084 and, in the case of a county chair, a report is also filed in compliance with Section 172.124. On the filing of the report, the secretary of state shall calculate the amount of the final installment and prepare and deliver to the comptroller of public accounts a certified statement indicating that amount and the appropriate county or state chair's name.

(e) On receipt of a certified statement under Subsection (c) or (d), the comptroller of public accounts shall issue a warrant in the certified amount of the installment payable to the county or state chair identified by the statement.

Amended by Acts 1987, 70th Leg., ch. 54, § 12(f), eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 114, § 15, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 864, § 168, eff. Sept. 1, 1997.

Historical and Statutory Notes

1987 Legislation

The 1987 amendatory act, to conform this section to Acts 1985, 69th Leg., ch. 966 [see italicized note, main volume], substituted references to a statement of estimated primary election expenses for references to a request for state funds, in subsec. (a)(1) deleted "and beginning primary fund balance" following "contributions", in subsec. (b)(1) and (2) inserted "or three-fifths if the secretary of

state determines that figure to be more efficient", and § 14(b) of the amendatory act repealed Acts 1985, 69th Leg., ch. 966.

1989 Legislation

The 1989 amendment in the first sentence of subsec. (d) added "and, in the case of a county chairman, a report is also filed in compliance with Section 172.124".

Library References

Party nominations, see Brooks, 35 Texas Practice § 11.21.

§ 173.0831. State Payment of Start-up Primary Funds

(a) Not later than the 30th day before the beginning date of the regular filing period for public offices in the general primary election, a county chair may submit to the secretary of state a written statement of estimated primary election expenses.

(b) Not later than the 10th day after the date the statement is received, the secretary of state shall have disbursed to the county chair start-up funds in an amount equal to 10 percent of the amount approved for and expended by the county chair and executive committee in the preceding general primary election.

Added by Acts 1993, 73rd Leg., ch. 728, § 68, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 864, § 169, eff. Sept. 1, 1997.

Historical and Statutory Notes

1993 Legislation

Section 93 of the 1993 Act provides:
"For the primary election held in 1994, a written statement may be submitted under Section

173.0831, as added by this Act, not later than the 10th day after the effective date of this Act."

§ 173.084. Expense Report by Party

(a) Regardless of whether state funds are requested for paying primary expenses, each county chair and state chair shall prepare a report that includes:

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(1) an itemized list of the actual expenses incurred in connection with the general and runoff primaries by the authority preparing the report and by the executive committee over which the authority presides;

(2) the amount of the primary candidates' filing fees required to be deposited in the county primary fund if the report is by a county chair, or in the state primary fund if the report is by the state chair;

(3) the amount of filing fees that have been refunded;

(4) the amount of the contributions to the executive committee over which the authority preparing the report presides that:

(A) are for the purpose of defraying primary election expenses; and

(B) have not been included in a report filed under this section for a previous primary election year; and

(5) the balance in the county primary fund if the report is by a county chair, or in the state primary fund if the report is by the state chair, that remains after deducting the primary election expenses actually incurred and the refunded filing fees.

(b) The authority preparing the report shall file it with the secretary of state not later than the 30th day after runoff primary election day or not later than the 30th day after general primary election day if no runoff primary is held in the county, in the case of the county chair's report, or if no runoff primary is held for a statewide or district office, in the case of the state chair's report. The secretary for good cause may extend the filing deadline.

(c) The report must be sworn to by the authority preparing it.

(d) Any compensation claimed under Section 173.004 may be forfeited on the failure of a county chair to file a timely report.

Amended by Acts 1987, 70th Leg., ch. 54, § 12(g), eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 728, § 69, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 864, § 170, eff. Sept. 1, 1997.

Historical and Statutory Notes

1987 Legislation

The 1987 amendatory act, to conform this section to Acts 1985, 69th Leg., ch. 966 [see italicized note under § 173.083, main volume], rewrote the first paragraph in subsec. (a), inserted in subsec.

(b) the deadline provision of twenty days after the general primary election day, and § 14(b) of the amendatory act repealed Acts 1985, 69th Leg., ch. 966.

§ 173.085. State Payment of Excess Primary Expenses

(a) If the actual expenditure for an item of primary election expense exceeds the amount estimated for the item in the statement of estimated primary election expenses, the excess expense is payable with state funds as provided by this section.

(b) To obtain state compensation for an excess expense, the county chair or state chair, as applicable, must include in the report required by Section 173.084:

(1) an identification of the item for which the excess expense was incurred;

(2) the amount of the excess; and

(3) an explanation of the reason for exceeding the estimate.

(c) The secretary of state shall approve the payment of the excess expense with state funds if the secretary determines that payment is justified by good cause. If the secretary determines that payment of the entire excess expense is not justified by good cause, the secretary shall approve the excess expense in the reduced amount that the secretary determines is appropriate.

(d) The secretary of state shall promptly notify the authority filing the report of each item of excess expense not approved or approved in a reduced amount.

(e) An item of excess primary election expense that is not approved by the secretary of state, or that part of an item that is not approved, may not be paid with state funds.

(f) If the secretary of state approves an excess expense, the secretary shall include the approved amount in the certified statement prepared under Section 173.083(d).

Amended by Acts 1987, 70th Leg., ch. 54, § 12(h), eff. Sept. 1, 1987; Acts 1997, 75th Leg., ch. 864, § 171, eff. Sept. 1, 1997.

Historical and Statutory Notes

1987 Legislation

The 1987 amendatory act, to conform this section to Acts 1985, 69th Leg., ch. 966 [see italicized note under § 173.083, main volume], substituted

reference to the statement of estimated primary election expenses for reference to request for state funds, and § 14(b) of the amendatory act repealed Acts 1985, 69th Leg., ch. 966.

§ 173.0851. Disposition of Surplus in Primary Fund

(a) Any surplus remaining in a primary fund shall be remitted to the secretary of state immediately after the final payment from the fund of the necessary expenses for holding the primary elections for that year, but not later than July 1 following the applicable primary election. The surplus in a primary fund shall be remitted regardless of whether state funds were requested by the chair.

(b) Any surplus primary funds received by the secretary of state under this section shall be deposited in the state treasury and may be used only for the financing of primary elections. Added by Acts 1987, 70th Leg., ch. 54, § 12(i), eff. Sept. 1, 1987. Amended by Acts 1987, 70th Leg., ch. 472, § 46, eff. Sept. 1, 1987; Acts 1997, 75th Leg., ch. 864, § 172, eff. Sept. 1, 1997.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment in subsec. (a) rewrote the sentence relating to remission of any surplus.

§ 173.086. Challenge of Disbursement of State Funds

(a) The authority who submitted a statement of estimated primary election expenses under this subchapter may challenge in a district court in Travis County the amount of state funds approved by the secretary of state for disbursement.

(b) A petition stating the ground of the challenge must be filed with the court not later than the 20th day after the earlier of:

(1) the date of receipt of the secretary of state's notice of disapproval or approval in a reduced amount of a primary election expense involved in the challenge; or

(2) the date of receipt of the comptroller's warrant for payment of a primary election expense involved in the challenge.

(c) If the court determines the challenged amount is less than the amount to which the petitioner is entitled by law, the court shall order payment in the proper amount.

Amended by Acts 1987, 70th Leg., ch. 54, § 12(j), eff. Sept. 1, 1987.

Historical and Statutory Notes

1987 Legislation

The 1987 amendatory act, to conform this section to Acts 1985, 69th Leg., ch. 966 [see italicized note under § 173.083, main volume], substituted

reference to statement of estimated primary election expenses for reference to request for state funds, and repealed Acts 1985, 69th Leg., ch. 966.

§ 173.087. Liability of County Chair and County Executive Committee

The county executive committee is not liable for the debts incurred by the committee or the county chair in connection with a primary election that are unpaid because the legislative appropriation is insufficient. The county chair or any other member of the county executive committee is not personally liable for those debts.

Amended by Acts 1997, 75th Leg., ch. 864, § 173, eff. Sept. 1, 1997.

Library References

Party nominations, see Brooks, 35 Texas Practice § 11.21.

§ 173.088. Availability of Guidelines

The secretary of state shall make available to each county and state chair, for use in preparing statements and reports under this chapter, any guidelines the secretary prescribes for determining the necessity of primary election expenses.

Amended by Acts 1987, 70th Leg., ch. 54, § 12(k), eff. Sept. 1, 1987; Acts 1997, 75th Leg., ch. 864, § 174, eff. Sept. 1, 1997.

Historical and Statutory Notes

1987 Legislation

The 1987 amendatory act, to conform this section to Acts 1985, 69th Leg., ch. 966 [see italicized note under § 173.083, main volume]; substituted

reference to statements and reports under this chapter for reference to requests for state funding, and § 14(b) of the amendatory act repealed Acts 1987, 69th Leg., ch. 966.

CHAPTER 174. CONVENTIONS

SUBCHAPTER A. GENERAL PROVISIONS

Section
174.003. Delegate to be Qualified Voter.

Section
174.063. Time and Place of Convention.
174.0631. Consideration for Use of Public Building for Convention.

SUBCHAPTER B. PRECINCT CONVENTIONS

174.022. Time and Place of Convention.
174.023. Notice of Hour and Place.
174.025. Organizing the Convention.
174.027. Records of Convention.

174.064. Notice of Hour and Place.
174.065. Organizing the Convention.
174.069. Record of Delegates.

SUBCHAPTER D. BIENNIAL STATE CONVENTION

SUBCHAPTER C. COUNTY AND SENATORIAL DISTRICT CONVENTIONS

174.062. Type of Convention Held.

174.092. Time and Place of Convention.
174.093. Notice of Time and Place.
174.094. Organizing the Convention.
174.097. Attendance by Public Officers.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

SUBCHAPTER A. GENERAL PROVISIONS

Library References

Party nominations, see Brooks, 35 Texas Practice § 11.21.

§ 174.003. Delegate to be Qualified Voter

In addition to the requirement of party affiliation, to be eligible to serve as a delegate to a county, senatorial district, or state convention held under this chapter, a person must be a qualified voter of the territory that the person is selected to represent or a resident of that territory who is eligible to vote a limited ballot.

Amended by Acts 1997, 75th Leg., ch. 864, § 175, eff. Sept. 1, 1997.

SUBCHAPTER B. PRECINCT CONVENTIONS

§ 174.022. Time and Place of Convention

(a) The precinct conventions shall be held on general primary election day in the regular county election precincts.

(b) Not later than the date of the regular drawing for position on the general primary election ballot, the county executive committee shall set the hour and place for convening each

precinct convention for the precincts served by the committee. If the county executive committee fails to do so, the county chair shall set the hour and place.

(c) The hour set for convening the conventions may not be earlier than 7 p.m. or later than 9 p.m. Notwithstanding the hour set for convening, the convention may not convene until the last voter has voted at the precinct polling place.

(d) The place selected for a precinct convention must meet the same requirements for access by the elderly and persons with physical disabilities as a polling place under Section 43.034(a) unless the state executive committee for a political party issues an order that the places for precinct conventions for that political party are not required to meet the same requirements as a polling place under Section 43.034(a). The order must be entered in the minutes of the state executive committee not later than the 30th day before the date precinct conventions are to be held.

Amended by Acts 1986, 69th Leg., 3rd C.S., ch. 14, § 21, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 622, § 2, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 864, § 176, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, § 5.14, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 809, § 3, eff. Sept. 1, 1999.

Historical and Statutory Notes

1986 Legislation

The 1986 amendment, in subsec. (b), substituted "date of the regular drawing for position on the

general primary election ballot" for "third Monday in March of the primary election year".

§ 174.023. Notice of Hour and Place

(a) The county chair shall post a notice of the hour and place for convening each precinct convention on the bulletin board used for posting notice of meetings of the commissioners court. The notice must remain posted continuously for the 10 days immediately preceding the date of the convention.

(b) Not later than the 10th day before the date of the precinct conventions, the county chair shall deliver to the county clerk written notice of the hour and place for convening each precinct convention.

(c) If the county chair fails to post or deliver notice in accordance with this section, another member of the county executive committee may post or deliver the notice.

Amended by Acts 1997, 75th Leg., ch. 864, § 177, eff. Sept. 1, 1997.

§ 174.025. Organizing the Convention

(a) The precinct chair is the temporary chair of the precinct convention held under this subchapter.

(b) If the precinct chair is absent, a person who is eligible to participate in the convention may act as temporary chair.

(c) Before conducting business, the temporary chair shall prepare a list containing the name and residence address of each person who is admitted to participate in the convention.

(d) The temporary chair shall call the convention to order.

(e) The convention shall select a convention chair and a convention secretary. The convention may select any other officers considered necessary to conduct the convention's business.

Amended by Acts 1997, 75th Leg., ch. 864, § 178, eff. Sept. 1, 1997.

§ 174.027. Records of Convention

(a) The convention chair shall prepare, sign, and make a copy of a list of the names and residence addresses of the delegates and any alternates selected by the convention.

(b) The convention chair shall sign and make a copy of the list of precinct convention participants required by Section 174.025(c).

(c) The convention chair shall deliver the originals and copies of the lists to the county chair not later than the third day after the date of the precinct convention, except that if delivered by mail, they shall be deposited in the mail not later than the second day after the date of the precinct convention.

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§ 174.0631

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(d) The county chair shall retain the copies of the lists until the end of the voting year in which they are received.

(e) If senatorial district conventions will be held in the county, the county chair shall deliver the originals of the lists to the temporary chairs of the senatorial district conventions before the conventions convene.

(f) The original lists are not public information.

Amended by Acts 1987, 70th Leg., ch. 472, § 47, eff. Sept. 1, 1987; Acts 1987, 70th Leg., ch. 499, § 1, eff. Sept. 1, 1987; Acts 1997, 75th Leg., ch. 864, § 179, eff. Sept. 1, 1997.

Historical and Statutory Notes

1987 Legislation

Acts 1987, 70th Leg., ch. 472, § 47, in subsec. (c) substituted "county chairman" for "county clerk", and rewrote subsec. (d).

Acts 1987, 70th Leg., ch. 499, § 1 made the same change.

SUBCHAPTER C. COUNTY AND SENATORIAL DISTRICT CONVENTIONS

§ 174.062. Type of Convention Held

(a) A county convention shall be held in a county if the county is not situated in more than one state senatorial district.

(b) If a county is situated in more than one state senatorial district, instead of a county convention a senatorial district convention shall be held in each part of the county that is situated in a different senatorial district, unless otherwise provided by party rule.

Amended by Acts 1987, 70th Leg., ch. 366, § 1, eff. Aug. 31, 1987.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment in subsec. (b), added "unless otherwise provided by party rule".

§ 174.063. Time and Place of Convention

(a) The county and senatorial district conventions shall be held on the third Saturday after general primary election day. However, if that date occurs during Passover or on the day following Good Friday, the conventions shall be held on the next Saturday that does not occur during Passover or on the day following Good Friday.

(b) The hour and place for the convening of a county convention shall be set in the same manner as for the precinct conventions held under this chapter.

(c) The hour and place for the convening of a senatorial district convention shall be set in the same manner as for the precinct conventions held under this chapter, except that only those members of the county executive committee who are the precinct chairs for the precincts in the territory represented at the senatorial district convention may participate in setting the convention's hour and place, and if they fail to do so, the temporary chair of the senatorial district convention shall set the hour and place.

Amended by Acts 1989, 71st Leg., ch. 333, § 1, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 29, § 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 864, § 180, eff. Sept. 1, 1997.

§ 174.0631. Consideration for Use of Public Building for Convention

(a) No charge may be made for the use of a public building for a precinct, county, or senatorial district convention except for reimbursement for the actual expenses resulting from use of the building for the convention.

(b) The reimbursing authority is entitled to an itemized statement of expenses before making remittance.

(c) A person commits an offense if the person assesses a charge for the use of a public building for a precinct, county, or senatorial district convention in violation of Subsection (a). An offense under this subsection is a Class C misdemeanor.

Added by Acts 1989, 71st Leg., ch. 333, § 2, eff. Sept. 1, 1989.

Cross References

Punishment, Class C misdemeanor, see
V.T.C.A., Penal Code § 12.23.

§ 174.064. Notice of Hour and Place

(a) A notice of the hour and place for convening each county and senatorial district convention shall be posted on the bulletin board used for posting notice of meetings of the commissioners court. The notice must remain posted continuously for the 10 days immediately preceding the date of the convention.

(b) Not later than the 10th day before the date of the county and senatorial district conventions, written notice of the hour and place for convening each convention shall be delivered to the county clerk.

(c) The county chair shall post and deliver the notice of a county convention. The temporary chair of a senatorial district convention shall post and deliver the notice of the senatorial district convention.

(d) If the county chair fails to post or deliver notice in accordance with this section, another member of the county executive committee may post or deliver the notice. If the temporary chair of a senatorial district convention fails to post or deliver notice in accordance with this section, another member of the county executive committee who may participate in setting the convention's hour and place may post or deliver the notice.

Amended by Acts 1997, 75th Leg., ch. 864, § 181, eff. Sept. 1, 1997.

§ 174.065. Organizing the Convention

(a) The county chair is the temporary chair of a county convention held under this subchapter. If a senatorial district is situated in more than one county, the senatorial district executive committee member from each county is the temporary chair of the senatorial district convention held in the territory that the committee member represents. If a senatorial district is not situated in more than one county, the chair of the district executive committee is the temporary chair of the senatorial district convention.

(b) If the person designated as temporary chair by Subsection (a) is absent, a delegate to the convention may act as temporary chair.

(c) The temporary chair shall call the convention to order and deliver the lists of delegates prepared under Section 174.027 to the convention.

(d) The convention shall select a convention chair and a convention secretary from among the delegates present. The convention may select any other officers considered necessary to conduct the convention's business.

Amended by Acts 1997, 75th Leg., ch. 864, § 182, eff. Sept. 1, 1997.

§ 174.069. Record of Delegates

(a) The chair of a county or senatorial district convention shall prepare and sign a list of the names and residence addresses of the delegates and any alternate delegates to the state convention selected by the convention.

(b) The convention chair shall deliver the list to the state chair not later than the fifth day after the date the convention adjourns.

Amended by Acts 1997, 75th Leg., ch. 864, § 183, eff. Sept. 1, 1997.

SUBCHAPTER D. BIENNIAL STATE CONVENTION

§ 174.092. Time and Place of Convention

(a) The biennial state convention shall be convened on any day in June.

(b) Not later than the date the state chair delivers to the county chairs the certification of names for placement on the general primary election ballot, the state executive committee shall set the date, hour, and place for convening the state convention.

Amended by Acts 1986, 69th Leg., 3rd C.S., ch. 14, § 22, eff. Sept. 1, 1987; Acts 1997, 75th Leg., ch. 864, § 184, eff. Sept. 1, 1997.

Historical and Statutory Notes

1986 Legislation

The 1986 amendment, in subsec. (b), substituted "date the state chairman delivers to the county

chairmen the certification of names for placement on the general primary election ballot" for "second Wednesday in March of the convention year".

§ 174.093. Notice of Time and Place

Before the date of the party's precinct conventions held under this chapter, the state chair shall deliver written notice of the date, hour, and place for convening the biennial state convention to the secretary of state, each county chair, and each temporary chair of a senatorial district convention.

Amended by Acts 1997, 75th Leg., ch. 864, § 185, eff. Sept. 1, 1997.

§ 174.094. Organizing the Convention

(a) The state chair is the temporary chair of the biennial state convention.

(b) The temporary chair shall call the convention to order.

(c) The temporary chair shall prepare a list of the names and residence addresses of the delegates and any alternate delegates to the convention and shall deliver the list to the convention.

(d) The convention shall select a convention chair and a convention secretary. The convention may select any other officers considered necessary to conduct the convention's business.

Amended by Acts 1997, 75th Leg., ch. 864, § 186, eff. Sept. 1, 1997.

§ 174.097. Attendance by Public Officers

A nominee for or holder of an office of the state or federal government is entitled to attend a state convention of the nominee's or officeholder's party but may not vote in the convention unless serving as a delegate.

Amended by Acts 1997, 75th Leg., ch. 864, § 187, eff. Sept. 1, 1997.

SUBTITLE C. PARTIES NOMINATING BY CONVENTION

CHAPTER 181. PARTY WITH STATE ORGANIZATION

SUBCHAPTER A. NOMINATING BY CONVENTION GENERALLY

- Section 181.004. Party Organization.
- 181.0041. Registration of Party Required.
- 181.005. Qualifying for Placement on Ballot by Party Required to Nominate by Convention.
- 181.006. Petition Supplementing Precinct Convention Lists.

- Section 181.033. Filing Deadline.
- 181.034. Disposition of Applications.

SUBCHAPTER C. CONVENTIONS

- 181.061. Conventions at Which Nominations Made.
- 181.066. Organizing Precinct Convention.
- 181.067. Delivery of List of Precinct Convention Participants.

SUBCHAPTER B. APPLICATION FOR NOMINATION

- 181.032. Authority With Whom Application Filed.

Library References

Party nominations, see Brooks, 35 Texas Practice § 11.21.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

SUBCHAPTER A. NOMINATING BY CONVENTION GENERALLY

§ 181.004. Party Organization

(a) A political party making nominations under this chapter shall:

- (1) establish a state executive committee;
- (2) establish a county executive committee for each county in which the party will hold a county convention; and
- (3) select a precinct chair for each election precinct in which the party will hold a precinct convention.

(b) The party shall provide by rule for the selection of a chair of the state executive committee and each county executive committee.

Amended by Acts 1997, 75th Leg., ch. 864, § 188, eff. Sept. 1, 1997.

§ 181.0041. Registration of Party Required

A political party that intends to make nominations under this chapter for the general election for state and county officers must register with the secretary of state, in the manner prescribed by the secretary, not later than January 2 of the election year.

Added by Acts 1993, 73rd Leg., ch. 728, § 70, eff. Sept. 1, 1993.

§ 181.005. Qualifying for Placement on Ballot by Party Required to Nominate by Convention

(a) To be entitled to have the names of its nominees placed on the general election ballot, a political party required to make nominations by convention must file with the secretary of state, not later than the 75th day after the date of the precinct conventions held under this chapter, lists of precinct convention participants indicating that the number of participants equals at least one percent of the total number of votes received by all candidates for governor in the most recent gubernatorial general election. The lists must include each participant's residence address and voter registration number.

(b) A political party is entitled to have the names of its nominees placed on the ballot, without qualifying under Subsection (a), in each subsequent general election following a general election in which the party had a nominee for a statewide office who received a number of votes equal to at least five percent of the total number of votes received by all candidates for that office.

Amended by Acts 1987, 70th Leg., ch. 472, § 48, eff. Sept. 1, 1987.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment rewrote subsec. (b).

Notes of Decisions

Validity $\frac{1}{2}$

dates did not impose significant burden, and state's important regulatory interests were sufficient to justify the regulations. *Texas Independent Party v. Kirk*, C.A.5 (Tex.)1996, 84 F.3d 178.

$\frac{1}{2}$. Validity

May deadlines in Texas Election Code for filing petitions by minor party and independent candi-

§ 181.006. Petition Supplementing Precinct Convention Lists

(a) If the number of precinct convention participants indicated on the lists filed under Section 181.005 is fewer than the number required for the political party to qualify to have

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the names of its nominees placed on the ballot, the party may qualify by filing a petition as provided by this section.

(b) A petition must:

(1) satisfy the requirements prescribed by Section 141.062 for a candidate's petition;

(2) contain signatures in a number that, when added to the number of convention participants indicated on the lists, equals at least one percent of the total number of votes received by all candidates for governor in the most recent gubernatorial general election; and

(3) be filed with the secretary of state by the state chair before the deadline for filing the lists of precinct convention participants.

(c) Except as provided by this section, the petition is subject to the applicable provisions of Subchapter C, Chapter 141.¹

(d) A signer's voter registration is not required to be in any particular territory.

(e) A copy of a request for the withdrawal of a signature must be delivered to the state chair at the time the withdrawal request is filed.

(f) The following statement must appear at the top of each page of the petition: "I know that the purpose of this petition is to entitle the _____ Party to have its nominees placed on the ballot in the general election for state and county officers. I have not voted in a primary election or participated in a convention of another party during this voting year, and I understand that I become ineligible to do so by signing this petition. I understand that signing more than one petition to entitle a party to have its nominees placed on the general election ballot in the same election is prohibited."

(g) A person who has voted in a primary election or participated in a convention of another party during the voting year in which the petition is circulated is ineligible to sign the petition, and the signature of such a person is invalid.

(h) A signature is invalid if the person signed the petition subsequent to signing a petition to qualify another political party to have the names of its nominees placed on the ballot for the same election, whether the other party is circulating the petition under this chapter or under Chapter 182.

(i) On signing the petition, the person becomes ineligible to affiliate with another party during the voting year in which the petition is signed.

(j) The petition may not be circulated until after the date of the party's precinct conventions held under this chapter. A signature obtained on or before that date is invalid.

(k) The secretary of state shall post a notice of the receipt of a petition on the bulletin board used for posting notice of meetings of state governmental bodies. Any person may challenge the validity of the petition by filing a written statement of the challenge with the secretary of state not later than the fifth day after the date notice is posted. The secretary of state may verify the petition signatures regardless of whether the petition is timely challenged.

Amended by Acts 1997, 75th Leg., ch. 864, § 189, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1349, § 64, eff. Sept. 1, 1997.

¹ Section 141.061 et seq.

Notes of Decisions

Validity ½

½. Validity

Election Code §§ 141.062(a)(3), 141.063(2)(B) and 181.006(b)(1) requiring signatures on unrecognized political party petitions to be accompanied by

signer's voter registration number for those signatures to be valid were not framed in least restrictive manner necessary to achieve legitimate interest of Texas in regulating access to ballot and violated rights of members of minority party under First and Fourteenth Amendments of United States Constitution. *Pilcher v. Rains*, W.D.Tex. 1988, 683 F.Supp. 1130, affirmed 853 F.2d 334.

SUBCHAPTER B. APPLICATION FOR NOMINATION

Cross References

Parties without state organization, applicability of this subchapter, see V.T.C.A., Election Code § 182.0041.

§ 181.032. Authority With Whom Application Filed

(a) An application for nomination by a convention must be filed with:

- (1) the state chair, for a statewide or district office; or
- (2) the county chair, for a county or precinct office.

(b) Not later than the 10th day after the date of the filing deadline prescribed by Section 181.033, the authority with whom an application is filed shall deliver to the secretary of state a list containing each candidate's name and residence address and the office sought by the candidate.

Amended by Acts 1997, 75th Leg., ch. 864, § 190, eff. Sept. 1, 1997.

§ 181.033. Filing Deadline

(a) Except as provided by Subsection (b), an application for nomination by a convention must be filed not later than 5 p.m. on January 2 preceding the convention.

(b) A political party by rule may extend the filing deadline for applications for nomination for an office for which a candidate who has made an application withdraws, dies, or is declared ineligible.

Amended by Acts 1986, 69th Leg., 3rd C.S., ch. 14, § 23, eff. Sept. 1, 1987.

Historical and Statutory Notes

1986 Legislation

The 1986 amendment, in subsec. (a), changed the filing deadline from the first Monday in February to January 2.

§ 181.034. Disposition of Applications

(a) A political party shall provide by rule for transmitting information regarding applications for nomination to the chair of the appropriate convention.

(b) If an application is delivered to a convention, it shall be returned to the authority with whom it was filed not later than the 10th day after the date of the convention.

(c) The authority with whom an application is filed shall preserve each application for two years after the date of the appropriate convention.

Amended by Acts 1997, 75th Leg., ch. 864, § 191, eff. Sept. 1, 1997.

SUBCHAPTER C. CONVENTIONS

§ 181.061. Conventions at Which Nominations Made

(a) A political party nominating by convention must make its nominations for statewide offices at a state convention held on the second Saturday in June of the election year. The state convention consists of delegates selected at the county conventions held under Subsection (c).

(b) A party nominating by convention must make its nominations for offices of districts situated in more than one county at district conventions held on the second Saturday after the second Tuesday in March. A district convention consists of delegates selected at the county conventions held under Subsection (c).

(c) A party nominating by convention must make its nominations for county and precinct offices and for offices of districts not situated in more than one county at county conventions held on the first Saturday after the second Tuesday in March. A county convention consists

POLITICAL PARTIES

§ 181.067

Title 10

of delegates selected at precinct conventions held on the second Tuesday in March in the regular county election precincts.

(d) A party by rule may limit the delegates making nominations to those from the territory from which the office sought is elected.

Amended by Acts 1986, 69th Leg., 3rd C.S., ch. 14, § 24, eff. Sept. 1, 1987.

Historical and Statutory Notes

1986 Legislation

The 1986 amendment, in subsec. (b), changed the date for nominating conventions from the third Saturday in May to the second Saturday after the

second Tuesday in March and, in subsec. (c), changed the date from the second Saturday in May to the first Saturday after the second Tuesday in March.

Notes of Decisions

Validity $\frac{1}{2}$

significant burden to First or Fourteenth Amendment rights, and state's important regulatory interests were sufficient to justify the requirements. Texas Independent Party v. Kirk, C.A.5 (Tex.)1996, 84 F.3d 178.

$\frac{1}{2}$. **Validity**

Deadline requirements in Texas Election Code for minor party nominating conventions were not a

§ 181.066. Organizing Precinct Convention

(a) The precinct chair is the temporary chair of a precinct convention held under this chapter.

(b) Before conducting business, the temporary chair shall prepare a list containing the name and residence address of each person who is admitted to participate in the convention.

(c) The temporary chair shall call the convention to order.

(d) The convention shall select a convention chair. The convention may select any other officers considered necessary to conduct the convention's business.

Amended by Acts 1997, 75th Leg., ch. 864, § 192, eff. Sept. 1, 1997.

§ 181.067. Delivery of List of Precinct Convention Participants

(a) The chair of a precinct convention shall sign and make a copy of the list of precinct convention participants required by Section 181.066(b).

(b) The convention chair shall deliver the original and copy to the county chair not later than the third day after the date of the precinct convention, except that if delivered by mail they shall be deposited in the mail not later than the second day after the date of the precinct convention.

(c) If the party is required to nominate by convention, the convention chair shall make an additional copy of the list and deliver it to the state chair not later than the third day after the date of the precinct convention.

Amended by Acts 1997, 75th Leg., ch. 864, § 193, eff. Sept. 1, 1997.

CHAPTER 182. PARTY WITHOUT STATE ORGANIZATION

Section		Section	
182.002.	Party Organization.	182.0041.	Application for Nomination.
182.004.	Petition Supplementing Precinct Convention Lists.	182.005.	Nominations Made by County Convention.
		182.007.	Party's Certification of Nominees.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

Library References

Party nominations, see Brooks, 35 Texas Practice § 11.21.

§ 182.002. Party Organization

A political party making nominations under this chapter shall:

- (1) establish a county executive committee for each county in which the party will hold a county convention;
- (2) select a chair for each county executive committee; and
- (3) select a precinct chair for each election precinct in which the party will hold a precinct convention.

Amended by Acts 1997, 75th Leg., ch. 864, § 194, eff. Sept. 1, 1997.

§ 182.004. Petition Supplementing Precinct Convention Lists

(a) If the number of precinct convention participants indicated on the lists filed under Section 182.003 is fewer than the number required for the political party to qualify to have the names of its nominees placed on the ballot, the party may qualify by filing a petition as provided by this section.

(b) A petition must:

- (1) satisfy the requirements prescribed by Section 141.062 for a candidate's petition;
- (2) contain signatures in a number that, when added to the number of convention participants indicated on the lists, equals at least three percent of the total number of votes received in the county by all candidates for governor in the most recent gubernatorial general election; and
- (3) be filed with the county clerk by the county chair before the deadline for filing the lists of precinct convention participants.

(c) Except as provided by this section, the petition is subject to the applicable provisions of Subchapter C, Chapter 141.¹

(d) A signer's voter registration must be in the county in which the party seeks to be qualified but is not required to be in any other particular territory.

(e) A copy of a request for the withdrawal of a signature must be delivered to the county chair when the withdrawal request is filed.

(f) Sections 181.006(f)-(j) apply to a petition circulated under this section.

Amended by Acts 1997, 75th Leg., ch. 864, § 195, eff. Sept. 1, 1997.

¹ Section 141.061 et seq.

§ 182.0041. Application for Nomination

(a) To be entitled to be considered for nomination by a convention held under this chapter, a person must make an application for nomination.

(b) Subchapter B, Chapter 181,¹ applies to an application for nomination under this chapter.

Added by Acts 1987, 70th Leg., ch. 472, § 49, eff. Sept. 1, 1987.

¹ V.T.C.A. Election Code, § 181.031 et seq.

§ 182.005. Nominations Made by County Convention

A political party must make its nominations under this chapter at a county convention held on the first Saturday after the second Tuesday in March of the election year. The convention consists of delegates selected at precinct conventions held on the second Tuesday in March in the regular county election precincts.

Amended by Acts 1986, 69th Leg., 3rd C.S. ch. 14, § 25, eff. Sept. 1, 1987.

Historical and Statutory Notes

1986 Legislation

The 1986 amendment changed the county convention date from the second Saturday in May to the first Saturday after the second Tuesday in

March of the election year, and changed the precinct election date from the first Saturday in May to the second Tuesday in March.

Notes of Decisions

Validity 1

1. Validity

Deadline requirements in Texas Election Code for minor party nominating conventions were not a

significant burden to First or Fourteenth Amendment rights, and state's important regulatory interests were sufficient to justify the requirements. Texas Independent Party v. Kirk, C.A.5 (Tex.)1996, 84 F.3d 178.

§ 182.007. Party's Certification of Nominees

(a) The county chair shall certify in writing for placement on the general election ballot the name and address of each of the political party's nominees.

(b) Not later than the 20th day after the date of the county convention, the county chair shall deliver the certification to the authority responsible for having the official general election ballot prepared in the county.

(c) The county chair may not certify a candidate's name if, before delivering the certification, the county chair learns that the name is to be omitted from the ballot under Section 145.035.

Amended by Acts 1997, 75th Leg., ch. 864, § 196, eff. Sept. 1, 1997.

TITLE 11. PRESIDENTIAL ELECTIONS

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CHAPTER 191. SELECTION OF DELEGATES TO NATIONAL NOMINATING CONVENTION

SUBCHAPTER A. PRESIDENTIAL PRIMARY ELECTION

Section	
191.001.	Parties Required to Hold Presidential Primary Election.
191.002.	Qualifying for Place on Ballot.
191.003.	Notice of Candidates to Secretary of State.
191.004.	Presidential Primary Ballot.
191.005.	Procedures for Conduct of Presidential Primary Generally.

Section

191.006.	Financing Presidential Primary.
191.007.	Allocation of Delegates.
191.008.	Implementation by Party.
	[Sections 191.009 to 191.030 reserved for expansion]

SUBCHAPTER B. STATE CONVENTION

191.031.	Party Holding Primary Election.
191.032.	Party Not Holding Primary Election.

SUBCHAPTER A. PRESIDENTIAL PRIMARY ELECTION

§ 191.001. Parties Required to Hold Presidential Primary Election

To be entitled to have its nominees for president and vice-president of the United States placed on the general election ballot in a particular presidential election year, a political party must hold a presidential primary election in this state if:

- (1) in the presidential election year, the party is required by this code to nominate its candidates for state and county offices by primary election;
- (2) a presidential primary election is authorized under national party rules; and
- (3) before January 1 of the presidential election year, the national party has determined that it will hold a national presidential nominating convention that year.

Added by Acts 1986, 69th Leg., 3rd C.S., ch. 14, § 26, eff. Sept. 1, 1987.

Historical and Statutory Notes

A prior section 191.001 was renumbered as § 191.031 by the 1986 Act.

§ 191.002. Qualifying for Place on Ballot

(a) Candidates qualify to have their names placed on the presidential primary election ballot in the manner provided by party rule, subject to this section.

(b) If party rules provide for the filing of applications or signature petitions to qualify candidates for a place on the ballot, the filing deadline may not be later than the regular filing

Title 11

deadline for candidates in the general primary election. A signature on a candidate's petition is not valid unless it is that of a registered voter and is accompanied by the signer's residence address, including county, and voter registration number.

(c) A person may not sign petitions supporting more than one presidential candidate in the same primary, and, if a person does so, the person's signature is void as to all petitions the person signs.

Added by Acts 1986, 69th Leg., 3rd C.S., ch. 14, § 26, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 864, § 197, eff. Sept. 1, 1997.

Historical and Statutory Notes

A prior section 191.002 was renumbered as § 191.032 by the 1986 Act.

§ 191.003. Notice of Candidates to Secretary of State

The state chair of each political party holding a presidential primary election shall certify the name of each presidential candidate who qualifies for a place on the presidential primary election ballot and deliver the certification to the secretary of state not later than the 57th day before presidential primary election day.

Added by Acts 1986, 69th Leg., 3rd C.S., ch. 14, § 26, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 864, § 198, eff. Sept. 1, 1997.

§ 191.004. Presidential Primary Ballot

(a) A single ballot shall be used for the presidential primary election and general primary election. The secretary of state shall prescribe the form of the ballot, which must accommodate the regular form for the general primary election to the extent practicable.

(b) The names of the presidential candidates shall be printed as the first race on the ballot under the heading "Preference For Presidential Nominee" followed by the instruction, "You may vote for one presidential candidate whose name appears on the ballot by placing an 'X' in the square beside the candidate's name." If party rules provide for voting for an uncommitted status, the instruction shall read, "You may vote for one presidential candidate whose name appears on the ballot by placing an 'X' in the square beside the candidate's name or you may vote as uncommitted by placing an 'X' in the square beside 'Uncommitted.' Make only one choice." The instruction shall be changed as appropriate to accommodate the form of a voting system ballot.

(c) A drawing to determine the order in which the presidential candidates' names are printed on the ballot in the county shall be conducted in conjunction with the regular drawing for position on the general primary election ballot. "Uncommitted" shall be printed on the ballot following the candidates' names, if applicable.

Added by Acts 1986, 69th Leg., 3rd C.S., ch. 14, § 26, eff. Sept. 1, 1987.

§ 191.005. Procedures for Conduct of Presidential Primary Generally

(a) The presidential primary election shall be held in conjunction with the party's general primary election.

(b) Except as otherwise provided by this subchapter, the presidential primary election shall be conducted and the results canvassed, tabulated, and reported in accordance with the procedures prescribed by this code in relation to the general primary election to the extent those procedures can be made applicable.

(c) The secretary of state shall prescribe any additional procedures necessary for the orderly and proper administration of the presidential primary election.

Added by Acts 1986, 69th Leg., 3rd C.S., ch. 14, § 26, eff. Sept. 1, 1987.

§ 191.006. Financing Presidential Primary

(a) Subject to legislative appropriation, state funds may be spent to pay expenses incurred by the secretary of state or by a political party in connection with a presidential primary election.

(b) The provisions of this code relating to state financing of a general primary election govern a presidential primary election to the extent those provisions can be made applicable.

(c) The secretary of state shall adopt rules, consistent with this subchapter, that are necessary for the fair and efficient financing of presidential primary elections with state funds.

Added by Acts 1986, 69th Leg., 3rd C.S., ch. 14, § 26, eff. Sept. 1, 1987.

§ 191.007. Allocation of Delegates

Each political party holding a presidential primary election shall adopt a rule for allocating delegates based on the results of the presidential primary election. At least 75 percent of the total number of delegates who are to represent this state at the party's national presidential nominating convention, excluding delegates allocated among party and elected officials, shall be allocated in accordance with the rule among one or more of the candidates whose names appear on the presidential primary election ballot and, if applicable, the uncommitted status.

Added by Acts 1986, 69th Leg., 3rd C.S., ch. 14, § 26, eff. Sept. 1, 1987.

§ 191.008. Implementation by Party

(a) The state executive committee of each political party holding a presidential primary election shall adopt the rules necessary to implement this subchapter unless the rules already exist.

(b) The rules may not be inconsistent with this subchapter or with rules adopted by the secretary of state under this subchapter.

(c) A rule is enforceable by writ of mandamus in the same manner as if the rule were a statute.

(d) For a political party to be entitled to have its nominees for president and vice-president of the United States placed on the general election ballot in an election year in which the party is holding a presidential primary election, the rules adopted under this section or the rules already in existence must be filed with the secretary of state not later than January 5 of the presidential election year. The secretary of state may extend this deadline for good cause.

(e) Before presidential primary election day, the secretary of state shall notify the authority responsible for having the official general election ballot prepared in each county of each political party that failed to file a rule as provided by Subsection (d) and shall order those authorities to omit the party's nominees for president and vice-president of the United States from the general election ballot.

(f) The rules may be amended at any time by the state executive committee, but an amendment adopted in a presidential election year after the rules are filed with the secretary of state under Subsection (d) may not take effect until after the presidential election year if the rule affects the selection of delegates to the national presidential nominating convention.

Added by Acts 1986, 69th Leg., 3rd C.S., ch. 14, § 26, eff. Sept. 1, 1987.

[Sections 191.009 to 191.030 reserved for expansion]

SUBCHAPTER B. STATE CONVENTION

§ 191.031. Party Holding Primary Election

(a) If a political party holding a primary election in a presidential election year desires to send delegates to a national presidential nominating convention of the party, the party shall select the delegates at a state convention convened on any day in June of the presidential election year. Before the date of the party's precinct conventions held under Chapter 174, the party's state executive committee shall choose the date, hour, and place for the state convention.

(b) The state convention shall consist of delegates selected at the party's county and senatorial district conventions held under Chapter 174.

(c) Before the date of the party's precinct conventions, the party's state chair shall deliver written notice of the date, hour, and place for the state convention to:

Title 11

- (1) the secretary of state;
- (2) each county chair of the party; and
- (3) the temporary chair of each senatorial district convention of the party.

Formerly § 191.001. Renumbered as § 191.031 by Acts 1986, 69th Leg., 3rd C.S., ch. 14, § 26, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 864, § 199, eff. Sept. 1, 1997.

§ 191.032. Party Not Holding Primary Election

If a political party not holding a primary election in a presidential election year desires to send delegates to a national presidential nominating convention of the party, the party shall select the delegates at the state convention at which the party is authorized by this code to make nominations for state offices.

Formerly § 191.002. Renumbered as § 191.032 by Acts 1986, 69th Leg., 3rd C.S., ch. 14, § 26, eff. Sept. 1, 1987.

CHAPTER 192. PRESIDENTIAL ELECTORS AND CANDIDATES

SUBCHAPTER A. PRESIDENTIAL ELECTORS		Section
Section		192.032. Independent Candidate's Entitlement to Place on Ballot.
192.004. Elector Candidate Vacancy.		192.037. Rules for Counting Votes Not Cast for Both Candidates.
192.006. Meeting of Electors.		
192.007. Replacement After Election.		
SUBCHAPTER B. PRESIDENTIAL AND VICE-PRESIDENTIAL CANDIDATES		SUBCHAPTER C. WITHDRAWAL, DEATH, AND INELIGIBILITY OF PRESIDENTIAL AND VICE-PRESIDENTIAL CANDIDATES
192.031. Party Candidate's Entitlement to Place on Ballot.	192.062. Presidential or Vice-Presidential Party Nominee.	

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

SUBCHAPTER A. PRESIDENTIAL ELECTORS

§ 192.004. Elector Candidate Vacancy

(a) An elector candidate may withdraw from the presidential election before presidential election day, by delivering written notice of the withdrawal to:

- (1) the secretary of state; and
- (2) the state chair of the party that nominated the elector candidate or to the independent or write-in candidate for president who named the elector candidate.

(b) If an elector candidate withdraws, dies, or is declared ineligible before presidential election day, a replacement elector candidate may be named by the party that nominated the elector candidate or by the independent or write-in candidate for president who named the elector candidate.

(c) An independent or write-in candidate for president naming a replacement elector candidate must file with the secretary of state, before presidential election day, the name and residence address of the replacement candidate and a written statement, signed by the replacement candidate, that the person consents to be a candidate.

(d) If a political party's rules do not provide the manner of choosing a replacement elector candidate, the party's state executive committee may choose the replacement candidate. The state chair of a political party naming a replacement elector candidate must file with the secretary of state, before presidential election day, the name and residence address of the replacement candidate.

Amended by Acts 1997, 75th Leg., ch. 864, § 200, eff. Sept. 1, 1997.

§ 192.006. Meeting of Electors

(a) The electors shall convene at the State Capitol at 2 p.m. on the first Monday after the second Wednesday in December following their election and shall perform their duties as prescribed by federal law.

(b) The secretary of state shall arrange for the meeting place, notify the electors, and call the meeting to order. The secretary shall act as temporary chair of the meeting until the electors elect a chair from among themselves.

(c) If an elector is absent at the time for convening the meeting, the electors may declare the elector position vacant by a majority vote of those present at the meeting.

Amended by Acts 1997, 75th Leg., ch. 864, § 201, eff. Sept. 1, 1997.

§ 192.007. Replacement After Election

(a) The electors meeting to vote for president and vice-president may appoint a replacement elector by a majority vote of the qualified electors present if:

(1) the vacancy occurred before presidential election day and a replacement was not chosen under Section 192.004;

(2) on or after presidential election day, an elector is declared ineligible or dies; or

(3) the vacancy is declared under Section 192.006(c).

(b) The chair of the electors shall notify the secretary of state of the name and residence address of a replacement elector immediately on the replacement's appointment.

Amended by Acts 1997, 75th Leg., ch. 864, § 202, eff. Sept. 1, 1997.

SUBCHAPTER B. PRESIDENTIAL AND VICE-PRESIDENTIAL CANDIDATES

§ 192.031. Party Candidate's Entitlement to Place on Ballot

A political party is entitled to have the names of its nominees for president and vice-president of the United States placed on the ballot in a presidential general election if:

(1) the nominees possess the qualifications for those offices prescribed by federal law;

(2) before 5 p.m. of the 60th day before presidential election day, the party's state chair signs and delivers to the secretary of state a written certification of:

(A) the names of the party's nominees for president and vice-president; and

(B) the names and residence addresses of presidential elector candidates nominated by the party, in a number equal to the number of presidential electors that federal law allocates to this state; and

(3) the party is:

(A) required or authorized by Subchapter A of Chapter 172 to make its nominations by primary election; or

(B) entitled to have the names of its nominees placed on the general election ballot under Chapter 181.

Amended by Acts 1997, 75th Leg., ch. 864, § 203, eff. Sept. 1, 1997.

§ 192.032. Independent Candidate's Entitlement to Place on Ballot

(a) To be entitled to a place on the general election ballot, an independent candidate for president of the United States must make an application for a place on the ballot.

(b) An application must:

(1) comply with Section 141.031, except that:

(A) the application is not required to include a candidate's occupation, length of residence, or statement that the candidate is aware of the nepotism law; and

(B) the application must contain the applicable information required by Section 141.031(4) with respect to both the presidential candidate and the running mate;

(2) state the names and residence addresses of presidential elector candidates in a number equal to the number of presidential electors that federal law allocates to the state; and

(3) be accompanied by:

(A) a petition that satisfies the requirements prescribed by Section 141.062; and

(B) written statements signed by the vice-presidential candidate and each of the presidential elector candidates indicating that each of them consents to be a candidate.

(c) The application must be filed with the secretary of state not later than the second Monday in May of the presidential election year.

(d) The minimum number of signatures that must appear on the petition is one percent of the total vote received in the state by all candidates for president in the most recent presidential general election.

(e) A petition signer's voter registration is not required to be in any particular territory.

(f) The following statement must appear at the top of each page of the petition: "I did not vote this year in a presidential primary election."

(g) A signature on the petition is invalid if the signer:

(1) signs the petition on or before the date of the presidential primary election in the presidential election year; or

(2) voted in a presidential primary election during the presidential election year.

(h) A candidate in a presidential primary election is ineligible to be an independent candidate for president or vice-president of the United States in the succeeding general election.

Amended by Acts 1986, 69th Leg., 3rd C.S., ch. 14, § 27, eff. Sept. 1, 1987; Acts 1987, 70th Leg., ch. 427, § 7, eff. Sept. 1, 1987.

Historical and Statutory Notes

1986 Legislation

The 1986 amendment, in subsec. (c), substituted "May" for "July"; in subsec. (f), changed the petition statement by substituting "a presidential" for "the general" before "primary election" and deleting "of a political party that is holding a national presidential nominating convention this year" after "primary election"; in subsec. (g)(1), substituted "the date of the presidential" for "general" before "primary election" and "in" for "day of" after

"primary election"; in subsec. (g)(2), substituted "a presidential" for "the general" before "primary election" and deleted "of a political party that is holding a national presidential nominating convention" after "primary election"; and added subsec. (h).

1987 Legislation

The 1987 amendment, in subsec. (b), in par. (A) of subd. (1), added "or statement that the candidate is aware of the nepotism law".

Notes of Decisions

1. Validity of prior laws

McCarthy v. Briscoe, W.D.Tex.1976, 418 F.Supp. 816, application denied 97 S.Ct. 9, 429 U.S. 1316, 50 L.Ed.2d 47, application denied 539 F.2d 1353, application granted 97 S.Ct. 10, 429 U.S. 1317, 50 L.Ed.2d 49, [main volume] affirmed 553 F.2d 1005, certiorari denied 98 S.Ct. 612, 434 U.S. 985, 54 L.Ed.2d 480.

2. In general

McCarthy v. Briscoe, W.D.Tex.1976, 418 F.Supp. 816, application denied 97 S.Ct. 9, 429 U.S. 1316, 50 L.Ed.2d 47, application denied 539 F.2d 1353, application granted 97 S.Ct. 10, 429 U.S. 1317, 50 L.Ed.2d 49, [main volume] affirmed 553 F.2d 1005, certiorari denied 98 S.Ct. 612, 434 U.S. 985, 54 L.Ed.2d 480.

§ 192.037. Rules for Counting Votes Not Cast for Both Candidates

(a) If a voter writes in the name of a write-in candidate for president or vice-president but does not write in a name for a running mate, the vote shall be counted as a vote for the candidate and the candidate's running mate.

(b) A vote shall be counted for both candidates of a set of candidates for president and vice-president if:

(1) the ballot is marked to indicate that the voter is voting for one of the two candidates;

(2) the ballot is marked to indicate that the voter is not voting for the other candidate in the set; and

(3) the voter has not:

(A) indicated a vote for a presidential or vice-presidential candidate of another set; or

(B) written in the name of a person for whom the voter desires to vote instead of the candidate for whom the voter is not voting under Subdivision (2).

(c) The secretary of state shall prescribe guidelines consistent with this code to assist counting officers in counting ballots in which the presidential race is irregularly marked.

Amended by Acts 1997, 75th Leg., ch. 864, § 204, eff. Sept. 1, 1997.

**SUBCHAPTER C. WITHDRAWAL, DEATH, AND INELIGIBILITY OF
PRESIDENTIAL AND VICE-PRESIDENTIAL CANDIDATES**

§ 192.062. Presidential or Vice-Presidential Party Nominee

(a) The secretary of state shall certify in writing for placement on the ballot the name of a political party's replacement nominee for president or vice-president of the United States if:

(1) the original nominee withdraws, dies, or is declared ineligible on or before the 65th day before presidential election day; and

(2) the party's state chair delivers certification of the replacement nominee's name, signed by the state chair, to the secretary of state not later than 5 p.m. of the 60th day before presidential election day.

(b) If the state chair's certification of a replacement nominee is delivered by mail, it is considered to be delivered at the time of its receipt by the secretary of state.

(c) The name of a nominee who has withdrawn, died, or been declared ineligible shall be omitted from the ballot and the name of the replacement nominee placed on the ballot if a replacement nominee is certified for placement on the ballot as provided by this section. Otherwise, the withdrawn, deceased, or ineligible nominee's name shall be placed on the ballot.

(d) A vote for a withdrawn, deceased, or ineligible nominee whose name appears on the ballot shall be counted as a vote for the nominating political party's presidential elector candidates.

Amended by Acts 1997, 75th Leg., ch. 864, § 205, eff. Sept. 1, 1997.

TITLE 12. ELECTIONS TO FILL VACANCY IN OFFICE

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CHAPTER 201. DETERMINATION OF AND ELECTION TO FILL VACANCY

SUBCHAPTER A. RESIGNING OR DECLINING OFFICE

Section

201.001. Resigning or Declining Office.

SUBCHAPTER B. TIME VACANCY OCCURS

201.023. Resignation.

201.027. New Office.

Section

SUBCHAPTER C. SPECIAL ELECTION TO FILL VACANCY GENERALLY

201.053. Unexpired Term and Full Term Filled Simultaneously.

201.054. Filing Period for Application for Place on Ballot.

201.055. Renumbered.

SUBCHAPTER A. RESIGNING OR DECLINING OFFICE

§ 201.001. Resigning or Declining Office

(a) To be effective, a public officer's resignation or an officer-elect's declination must be in writing and signed by the officer or officer-elect and delivered to the appropriate authority for acting on the resignation or declination. The authority may not refuse to accept a resignation.

(b) If the authority to act on a resignation or declination is a body, the resignation or declination may be delivered to the presiding officer of the body or to its clerk or secretary.

(c) An officer-elect who intends to qualify for the office but desires to resign at a subsequent date may submit a resignation in the same manner as an officer who has assumed office, and the vacancy may be filled in the same manner as if the resignation had been submitted after the officer-elect assumed office.

Amended by Acts 1989, 71st Leg., ch. 1187, § 1, eff. Sept. 1, 1989.

Historical and Statutory Notes

1989 Legislation

The 1989 amendment, in subsec. (a), rewrote the last sentence.

Section 3 of the 1989 amendatory act provides:

"This Act applies only to a resignation delivered on or after the effective date of this Act.

"A resignation delivered before the effective date of this Act is governed by the law as it existed on the date of delivery, and that law is continued in effect for that purpose."

Library References

Resignations and vacancies, see Brooks, 35 Texas Practice § 7.17.

Notes of Decisions

Acceptance of resignation 1

1. Acceptance of resignation

Appropriate authority must accept written, signed, and delivered resignation of officer. Texas Democratic Executive Committee v. Rains (Sup. 1988) 756 S.W.2d 306.

An independent school district board member's written, signed resignation that has been delivered to the school board is effective upon its acceptance by the school board or on the eighth day after the date of its receipt by the school board, whichever occurs earlier. Op.Atty.Gen. 1996, No. DM-406.

SUBCHAPTER B. TIME VACANCY OCCURS

§ 201.022. **Death**

Notes of Decisions

In general 1

1. In general

County judge was authorized to fill the two vacancies which occurred in office of county commissioner when incumbent commissioner died

shortly before election in which he received votes necessary for reelection; judge could fill vacancy which occurred in commissioner's unexpired term on date of his death, and could fill vacancy which existed for future term beginning after election. Rice v. English (App. 12 Dist. 1987) 742 S.W.2d 439, writ denied.

§ 201.023. **Resignation**

If an officer submits a resignation, whether to be effective immediately or at a future date, a vacancy occurs on the date the resignation is accepted by the appropriate authority or on the eighth day after the date of its receipt by the authority, whichever is earlier.

Amended by Acts 1989, 71st Leg., ch. 1187, § 2, eff. Sept. 1, 1989.

Historical and Statutory Notes

1989 Legislation

The 1989 amendment added "or on the eighth day after the date of its receipt by the authority, whichever is earlier."

Section 3 of the 1989 amendatory act provides:

"(a) This Act applies only to a resignation delivered on or after the effective date of this Act.

"(b) A resignation delivered before the effective date of this Act is governed by the law as it existed on the date of delivery, and that law is continued in effect for that purpose."

Library References

Resignations and vacancies, see Brooks, 35 Texas Practice § 7.17.

Notes of Decisions

Effective date 4

Vacancy 3

Voting Rights Act 5

1. Construction and application

Election code section which provides that vacancy occurs on date state officer's resignation is accepted or on eighth day after date of its receipt by proper authority, whichever is earlier, does not

create actual vacancy in office, but rather, defines time at which vacancy occurs after resignation only for purposes of initiating electoral process to fill that vacancy. State ex rel. Angelini v. Hardberger (Sup. 1996) 932 S.W.2d 489.

3. Vacancy

"Vacancy" triggering electoral process existed after judge's written and signed resignation was delivered, even though Governor did not accept immediate resignation. Texas Democratic Execu-

ELECTIONS TO FILL VACANCIES

§ 201.027

Title 12

utive Committee v. Rains (Sup. 1988) 756 S.W.2d 306.

4. Effective date

State could not enforce election law resulting from decision of state Supreme Court, that Governor could appoint successor to Justice purporting to resign prior to expiration of term, effective upon expiration of term with appointee to serve until after next general election, without submitting interpretation for clearance under Voting Rights Act, even though review process was usually used on statutory amendments; decision changed existing decisional law, under which purported resignation would trigger election for successor at general election preceding expiration of term, and resulting partial conversion of elected office to appointed office was type of action typically subject to Voting Rights Act review. *Lulac of Texas v. State of Texas*, W.D.Tex.1998, 995 F.Supp. 719.

Election code provision which deemed a vacancy in state office on date state officer's resignation was accepted or on eighth day after date of its receipt by proper authority, whichever was earlier, did not oust justice who submitted future resignation before date on which he intended to vacate office, since that would have unconstitutionally restricted his tenure as duly elected officeholder. *State ex rel. Angelini v. Hardberger* (Sup. 1996) 932 S.W.2d 489.

Election code provision which deemed a vacancy in state office on date state officer's resignation was accepted or on eighth day after date of its receipt by proper authority, whichever was earlier, did not create vacancy in office of justice who submitted future resignation before date on which he intended to vacate office, for limited purpose of

triggering election, since that would have mandated election to fill vacancy that had not yet occurred and would have unconstitutionally infringed on governor's power to appoint successor to unexpired term of office when that office actually became vacant. *State ex rel. Angelini v. Hardberger* (Sup. 1996) 932 S.W.2d 489.

5. Voting Rights Act

Suit challenging whether Governor could appoint successor to Justice of state Court of Appeals, to take office immediately after sitting Justice announced resignation effective at end of term, without preclearance of procedure under Voting Rights Act, was not rendered moot when Justice's term expired and he became Chief Justice, with Governor's appointee assuming his old position; underlying issues were not resolved. *Lulac of Texas v. State of Texas*, W.D.Tex.1998, 995 F.Supp. 719.

In general, change from elected to appointed office is precisely type of voting change that is subject to preclearance requirements under Voting Rights Act. *Lulac of Texas v. State of Texas*, W.D.Tex.1998, 995 F.Supp. 719.

Federal district court would not order special election for position of Justice on state Court of Appeals, or remove sitting Justice until after next general election, as sanction for failure of state to submit for preclearance under Voting Rights Act change in procedure for election of Justices following resignation of incumbents, brought about by decision of state Supreme Court; procedure for next regularly scheduled election of judges was already underway and nature of change did not have racial overtones of sort that led to passage of preclearance requirement. *Lulac of Texas v. State of Texas*, W.D.Tex.1998, 995 F.Supp. 719.

§ 201.024. Removal

Notes of Decisions

Final judgment 1

1. Final judgment

Office of sheriff was not automatically vacated by return of felony guilty verdict against sheriff;

office would be sufficiently "vacant" for reelection of sheriff only upon final judgment of conviction and order of removal. *Leo v. Mancias* (App. 13 Dist. 1994) 885 S.W.2d 268.

§ 201.027. New Office

If a new office is created, a vacancy occurs on the effective date of the Act of the legislature creating the office or on the date the order creating the office is adopted.

Amended by Acts 1993, 73rd Leg., ch. 728, § 71, eff. Sept. 1, 1993.

Historical and Statutory Notes

2001 Legislation

Section 5 of Acts 2001, 77th Leg., ch. 692 provides:

"Except as provided by Subsection (b), Section 4 of this Act, for purposes of Section 201.027, Elec-

tion Code, the effective date of the Act creating the office of judge of the Probate Court No. 1 of Collin County is the effective date of the Government Code section establishing the court under this Act."

§ 201.028

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Title 12

§ 201.028. Deceased or Ineligible Candidate Receiving Vote Required for Election

Notes of Decisions

In general 1

shortly before election in which he received votes necessary for reelection; judge could fill vacancy which occurred in commissioner's unexpired term on date of his death, and could fill vacancy which existed for future term beginning after election. Rice v. English (App. 12 Dist. 1987) 742 S.W.2d 439, writ denied.

1. In general

County judge was authorized to fill the two vacancies which occurred in office of county commissioner when incumbent commissioner died

§ 201.029. Declination of Officer-Elect

Library References

Resignations and vacancies, see Brooks, 35 Texas Practice § 7.17.

SUBCHAPTER C. SPECIAL ELECTION TO FILL VACANCY GENERALLY

Library References

Resignations and vacancies, see Brooks, 35 Texas Practice § 7.17.

§ 201.052. Date of Election

Notes of Decisions

Law outside code 1

exceeding two years had to call a special election to fill a vacancy within 120 days from the date the vacancy occurred, notwithstanding the fact that no standard election date as provided by former V.A.T.S. Election Code, art. 2.01b (repealed; see, now, § 41.001) occurred within that period. Election Law Opinion No. MAM-1 (1984).

1. Law outside code

Pursuant to Const. Art. 11, § 11 a home rule city in which the charter provided for terms of office

§ 201.053. Unexpired Term and Full Term Filled Simultaneously

(a) If, after the general election for an office for which a vacancy is filled by special election but before the succeeding full term begins, a vacancy occurs in both the unexpired portion of the current term and in the succeeding full term that was filled at the general election, the special election shall be ordered to fill only the full term.

(b) If any portion of the unexpired current term remains after the date the final canvass of the special election for the full term is completed, the person elected to the full term, if eligible to hold the unexpired current term, is considered to be elected to the remainder of the unexpired current term also and is entitled to qualify and assume office for the unexpired current term and the succeeding full term immediately on receiving a certificate of election. The certificate must recite that it is for both the unexpired current term and the full term.

(c) After qualifying for the unexpired current term, the person is not required to qualify again for the full term. If a bond is required, the amount of the bond for the unexpired current term and the full term is the same as for the full term.

Renumbered from § 201.054 by Acts 1991, 72nd Leg., ch. 389, § 4, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

A former § 201.053 was deleted by Acts 1991, 72nd Leg., ch. 389, § 4, eff. Sept. 1, 1991.

§ 201.054. Filing Period for Application for Place on Ballot

(a) A candidate's application for a place on a special election ballot must be filed not later than:

(1) 5 p.m. of the 31st day before election day, if election day is on or after the 36th day after the date the election is ordered; or

(2) 5 p.m. of a day fixed by the authority ordering the election, which day must be not earlier than the fifth day after the date the election is ordered and not later than the 20th day before election day, if election day is before the 36th day after the date the election is ordered.

(b) If a special election is to be held as an emergency election and a law outside this code prescribes a filing deadline, that deadline applies.

(c) The election order must state the filing deadline.

(d) An application may not be filed before the election is ordered.

(e) An application filed by mail is considered to be filed at the time of its receipt by the appropriate authority.

Renumbered from § 201.055 by Acts 1991, 72nd Leg., ch. 389, § 4, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

A former § 201.054 was renumbered as § 201.053 by Acts 1991, 72nd Leg., ch. 389, § 4, eff. Sept. 1, 1991.

§ 201.055. Renumbered as § 201.054

CHAPTER 202. VACANCY IN OFFICE OF STATE OR COUNTY GOVERNMENT

Section	Section
202.003. New Office.	202.004. Nomination by Primary Election.
	202.006. Nomination by Executive Committee.

Library References

Party nominations, see Brooks, 35 Texas Practice § 11.21.

§ 202.003. New Office

(a) Subject to Subsection (b), an election for the first full term of an office for which no previous election has been held is governed by the same provisions as an election for the remainder of an unexpired term, and for that purpose, references in this chapter to an unexpired term include a full term in the case of those offices.

(b) If an Act of the legislature creating an office prescribes a date of creation that is later than the effective date of the Act, and if an authority authorized to create the office at an earlier date has not done so, the office shall appear on the ballot as follows:

(1) if the date of creation occurs in an even-numbered year, the office appears on the ballot in that even-numbered year;

(2) if the date of creation occurs on or before March 1 of an odd-numbered year, the office appears on the ballot in the preceding even-numbered year; and

(3) if the date of creation occurs after March 1 of an odd-numbered year, the office appears on the ballot in the subsequent even-numbered year.

Amended by Acts 1993, 73rd Leg., ch. 728, § 72, eff. Sept. 1, 1993.

§ 202.004. Nomination by Primary Election

(a) A political party's nominee for an unexpired term must be nominated by primary election if:

§ 202.004

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Title 12

(1) the political party is making nominations by primary election for the general election in which the vacancy is to be filled; and

(2) the vacancy occurs on or before the 62nd day before general primary election day.

(b) If the vacancy occurs on or before the 10th day before the date of the regular deadline for candidates to file applications for a place on the general primary ballot, an application for the unexpired term must be filed by the regular filing deadline.

(c) If the vacancy occurs after the 10th day before the date of the regular filing deadline, an application for the unexpired term must be filed not later than 5 p.m. of the 15th day after the date the vacancy occurs or 5 p.m. of the 60th day before general primary election day, whichever is earlier.

(d) The filing fee or petition requirements for a candidate for an unexpired term are the same as for a candidate for a full term.

Amended by Acts 1986, 69th Leg., 3rd C.S., ch. 14, § 28, eff. Sept. 1, 1987.

Historical and Statutory Notes

1986 Legislation

The 1986 amendment, in subd. (a)(2), substituted "62nd" for "65th".

§ 202.006. Nomination by Executive Committee

(a) A political party's state, district, county, or precinct executive committee, as appropriate for the particular office, may nominate a candidate for the unexpired term if:

(1) in the case of a party holding a primary election, the vacancy occurs after the 62nd day before general primary election day; or

(2) in the case of a party nominating by convention, the vacancy occurs after the fourth day before the date the convention having the power to make a nomination for the office convenes.

(b) The nominating procedure for an unexpired term under this section is the same as that provided by Subchapter B, Chapter 145,¹ for filling a vacancy in a party's nomination, to the extent that it can be made applicable.

Amended by Acts 1986, 69th Leg., 3rd C.S., ch. 14, § 29, eff. Sept. 1, 1987.

¹ Section 145.031 et seq.

Historical and Statutory Notes

1986 Legislation

The 1986 amendment, in subd. (a)(1), substituted "62nd" for "65th".

CHAPTER 203. VACANCY IN LEGISLATURE

Section

203.004. Date of Election.

Section

203.012. Time of Canvass.

203.014. Disposition of Filing Fees.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

§ 203.004. Date of Election

(a) Except as provided by Subsection (b), a special election shall be held on the first uniform election date occurring on or after the 36th day after the date the election is ordered.

(b) If the election is to be held as an emergency election, it shall be held on a Tuesday or Saturday occurring on or after the 36th day and before the 50th day after the date the election is ordered.

Amended by Acts 1991, 72nd Leg., ch. 389, § 5, eff. Sept. 1, 1991.

ELECTIONS TO FILL VACANCIES

§ 204.005

Title 12

§ 203.012. Time of Canvass

(a) The commissioners court shall convene to conduct the local canvass not later than the third day after election day.

(b) The governor shall conduct the state canvass not later than the seventh day after election day.

(c) The secretary of state shall post, on the bulletin board used for posting notice of meetings of state governmental bodies, a notice of the date, hour, and place of the canvass at least 24 hours before the canvass is conducted.

(d) Section 1.006 does not apply to this section.

Amended by Acts 1987, 70th Leg., ch. 472, § 50, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 163, § 5, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 728, § 73, eff. Sept. 1, 1993.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment added subsec. (c).

1989 Legislation

The 1989 amendment in subsec. (b) substituted "governor shall conduct" for "state canvassing board shall convene to conduct".

§ 203.014. Disposition of Filing Fees

The secretary of state shall deposit the filing fees received under Section 203.005 in a suspense account with the comptroller until after election day. The funds remaining in the account after any refunds are made shall be deposited to the credit of the General Revenue Fund.

Amended by Acts 1997, 75th Leg., ch. 1423, § 6.02, eff. Sept. 1, 1997.

CHAPTER 204. VACANCY IN CONGRESS

SUBCHAPTER A. VACANCY IN SENATE

Section

204.005. Vacancy Filled at Special Election.

Section

204.003. Vacancy Filled at General Election.

SUBCHAPTER A. VACANCY IN SENATE

§ 204.003. Vacancy Filled at General Election

If a vacancy occurs on or after January 1 of an even-numbered year and on or before the 62nd day before general primary election day, the remainder of the unexpired term shall be filled at the next general election for state and county officers.

Amended by Acts 1986, 69th Leg., 3rd C.S., ch. 14, § 30, eff. Sept. 1, 1987.

Historical and Statutory Notes

1986 Legislation

The 1986 amendment substituted "62nd" for "65th".

§ 204.005. Vacancy Filled at Special Election

If a vacancy occurs during an odd-numbered year or after the 62nd day before general primary election day in an even-numbered year, the remainder of the unexpired term shall be filled by a special election in the same manner as provided by Chapter 203 for the legislature, except that:

(1) the minimum number of signatures that must appear on a petition accompanying a candidate's application for a place on the ballot is 5,000; and

(2) Section 203.013 does not apply.

Amended by Acts 1986, 69th Leg., 3rd C.S., ch. 14, § 30, eff. Sept. 1, 1987.

Historical and Statutory Notes

1986 Legislation

The 1986 amendment substituted "62nd" for "65th".

TITLE 13. RECOUNTS

WESTLAW Computer Assisted Legal Research

WESTLAW supplements your legal research in many ways. WESTLAW allows you to

- update your research with the most current information
- expand your library with additional resources
- retrieve direct history, precedential history and parallel citations with the Insta-Cite service

For more information on using WESTLAW to supplement your research, see the WESTLAW Electronic Research Guide, which follows the Preface.

Library References

Election challenges, recounts, see Brooks, 35
Texas Practice § 11.24.

CHAPTER 211. GENERAL PROVISIONS

Section	Section
211.002. Definitions.	211.003. Change in Outcome of Election.
	211.007. Preservation of Recount Papers.

§ 211.002. Definitions

In this title:

- (1) "Recount" means the process conducted under this title for verifying the vote count in an election.
- (2) "Initial recount" means a recount obtained under Subchapter B, Chapter 212.
- (3) "Partial recount" means a recount in fewer than the total number of election precincts involved in an election.
- (4) "Supplementary recount" means a recount obtained under Subchapter C, Chapter 212,¹ following a partial initial recount.
- (5) "Expedited recount" means a recount obtained under Subchapter D, Chapter 212.²
- (6) "Recount coordinator" means the authority to whom a petition for an initial recount or an expedited recount is submitted under Section 212.026 or 212.082.
- (7) "Recount supervisor" means the authority designated by Section 213.001 to manage and supervise a recount in election precincts in the jurisdiction of a local canvassing authority.
- (8) "Recount document" means a petition for an initial recount, a petition for an expedited recount, an application for a supplementary recount, or an application for including remaining paper ballot precincts.
- (9) "Recount deposit" means the deposit required by Section 212.111.
- (10) "Voting system vote" means a vote cast in a voting system that is not a write-in vote.
- (11) "Automatic recount" means a recount conducted under Chapter 216.

Amended by Acts 2001, 77th Leg., ch. 851, § 2, eff. Sept. 1, 2001.

¹ Section 212.051 et seq.

² Section 212.081 et seq.

Library References

Election challenges, recounts, see Brooks, 35
Texas Practice § 11.24.

§ 211.003. Change in Outcome of Election

In this title, a change in the outcome of an election occurs if, as a result of a recount in the precincts included in a recount document:

- (1) a candidate who was shown by the previous vote count to be nominated, elected, or entitled to a place on a runoff ballot or to be tied for nomination, election, or entitlement to a place on a runoff ballot loses that status;
- (2) in a presidential general election, the presidential candidate who was shown by the previous vote count to have received the most votes in this state loses that status;
- (3) in an election on a measure, the winning side becomes the losing side; or
- (4) in a presidential primary election, entitlement to delegate representation at the political party's national presidential nominating convention on behalf of a candidate or an uncommitted delegation is changed.

Amended by Acts 1986, 69th Leg., 3rd C.S., ch. 14, § 32, eff. Sept. 1, 1987.

Historical and Statutory Notes

1986 Legislation

The 1986 amendment added “; or” to the end of subd. (3) and added subd. (4).

§ 211.007. Preservation of Recount Papers

(a) In this section, “recount papers” means the documents requesting a recount, amendments to those documents, records of notices given, records of costs of the recount, and file copies of statements of costs.

(b) A recount coordinator shall retain the recount papers in the coordinator's possession for the longest of the following periods:

- (1) the period for preserving the precinct election records;
- (2) 60 days after the date the canvass of the recount is completed;
- (3) 30 days after the date assessed costs are finally settled; or
- (4) 30 days after the date an amount owed by a person against whom costs are assessed is referred for collection.

(c) If a recount supervisor is also the recount coordinator for a recount, the papers accumulated in the officer's capacity as supervisor shall be retained for the same period as those accumulated in the officer's capacity as coordinator.

(d) A recount supervisor who is not the recount coordinator shall retain the recount papers in the supervisor's possession for the longest of the following periods:

- (1) the period for preserving the precinct election records;
- (2) 60 days after the date recount costs for payment of claimants are certified; or
- (3) if costs in the supervisor's jurisdiction are assessed against a person, six months after the date a statement of costs incurred in the supervisor's jurisdiction is delivered to the recount coordinator.

(e) Subsections (b), (c), and (d) do not apply to recount papers delivered to the authority to whom an amount owed by a person against whom costs are assessed is referred for collection.

Amended by Acts 1997, 75th Leg., ch. 864, § 206, eff. Sept. 1, 1997.

CHAPTER 212. REQUESTING RECOUNT

SUBCHAPTER A. REQUESTING
RECOUNT GENERALLY

Section

- 212.033. Effect of Petition Submission on Canvass.
212.0331. Effect of Petition Submission on Qualifying for Office.
212.034. Counting Errors as Ground for Recount in Paper Ballot Precincts.
212.035. Application for Including Remaining Paper Ballot Precincts.

Section

- 212.001. General Requirements for Recount Document.
212.005. Multiple Recounts on Same Office or Measure.
212.006. Withdrawal of Recount Petition.

SUBCHAPTER B. INITIAL RECOUNT

- 212.022. Obtaining Initial Recount in Election on Office.
212.023. Obtaining Initial Recount in Election for Presidential Electors.
212.0231. Obtaining Initial Recount in Presidential Primary Election.
212.024. Obtaining Initial Recount in Election on Measure.
212.0241. No Ground Required for Electronic Voting System Recount.
212.027. Notice of Petition Submission to Other Canvassing Authorities.
212.028. Time for Submitting Petition.
212.029. Initial Review of Petition.
212.030. Amendment of Petition.
212.031. Final Action on Petition.
212.032. Notice of Approval to Others Involved in Election.

SUBCHAPTER C. SUPPLEMENTARY RECOUNT FOLLOWING PARTIAL RECOUNT IN PAPER BALLOT PRECINCTS

- 212.053. Obtaining Supplementary Recount.

SUBCHAPTER D. EXPEDITED RECOUNT

- 212.081. Applicability of Subchapter.
212.083. Deadline for Submitting Petition.
212.085. Deadline for Amending Petition.

SUBCHAPTER E. DEPOSIT FOR COSTS OF RECOUNT

- 212.112. Amount of Deposit.
212.113. Return of Deposit.

SUBCHAPTER F. SCOPE OF RECOUNT

- 212.131. Scope of Initial Recount.
212.134. Early Voting Votes Treated as Precinct.
212.137. Objection to Exclusion of Votes.

Library References

Tex. Prac., County and Special District Law, ch. 11.

Election challenges, recounts, see Brooks, 35 Texas Practice § 11.24.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

SUBCHAPTER A. REQUESTING RECOUNT GENERALLY

§ 212.001. General Requirements for Recount Document

A recount document submitted under this title must:

- (1) be in writing;
- (2) identify the office or measure for which a recount is desired;
- (3) state the grounds for the recount;
- (4) state the side of the measure that the person requesting the recount represents, if applicable;
- (5) identify the election precincts, grouped by county or other appropriate territorial unit if the election involves more than one local canvassing authority, for which a recount is desired and must indicate the method of voting used in each precinct;
- (6) be signed by:
 - (A) the person requesting the recount or, if there is more than one, any one or more of them; or
 - (B) an agent of the person requesting the recount;

(7) state each requesting person's name, residence address, and, if authorization to obtain the recount is based on eligibility to vote in the election, voter registration number, and county of registration if the election covers territory in more than one county;

(8) designate an agent who is a resident of this state to receive notice under this title on behalf of the person requesting the recount if:

(A) the person requesting the recount is not a resident of this state; or

(B) there is more than one person requesting the recount;

(9) state the mailing address and at least one telephone number, if any, at which the person requesting the recount or an agent, identified by name, may receive notice given under this title; and

(10) state the mailing address and at least one telephone number, if any, at which the opposing candidates for the office or their agents, identified by name, may receive notice given under this title.

Amended by Acts 1987, 70th Leg., 2nd C.S., ch. 59, § 1, eff. Oct. 20, 1987.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment inserted provisions requiring the recount document to state the grounds for

the recount and to state the mailing address and phone number at which an opposing candidate may receive notice.

§ 212.005. Multiple Recounts on Same Office or Measure

(a) The approval of a petition for a recount does not preclude the submission and approval of another petition on the same office or measure. A petition with respect to a particular office or measure may not be submitted after an initial recount or an expedited recount on the office or measure is completed.

(b) If more than one recount petition, application for a supplementary recount, or application for including remaining paper ballot precincts is submitted, the recount coordinator shall promptly inform each petitioner or applicant of the submission by the other person.

(c) Except as provided by Subsection (d), if more than one petition or application is approved, the recount requested by each person shall be conducted at the same time.

(d) If different counting methods are chosen under Section 214.042(a) among multiple requests for a recount of electronic voting system results, only one method may be used in the recount. A manual recount shall be conducted in preference to an electronic recount and an electronic recount using a corrected program shall be conducted in preference to an electronic recount using the same program as the original count.

Amended by Acts 1997, 75th Leg., ch. 1349, § 65, eff. Sept. 1, 1997.

§ 212.006. Withdrawal of Recount Petition

(a) A recount petitioner may withdraw the petition for the recount by submitting a request to withdraw the petition to the recount coordinator. On receipt of the request, the recount coordinator shall immediately inform, by the most expeditious means possible, all parties who are entitled to receive notice of the recount under Section 212.032 that the request has been submitted and the recount canceled.

(b) After a recount petition has been withdrawn, the petitioner may not petition again for a recount of that election.

(c) The request for the withdrawal of a recount petition must be sworn to by the person requesting the withdrawal. The request must contain:

(1) the identity of the office or measure for which the recount was requested;

(2) the reason for the withdrawal;

(3) a statement acknowledging that once the petition is withdrawn, the petitioner may not petition again for a recount of that election;

(4) a statement acknowledging that the results of the canvass are official;

(5) a statement acknowledging that money properly expended toward the holding of the recount before the request was submitted will be subtracted from the amount of the deposit that is refunded;

(6) the signature of:

(A) the person requesting the withdrawal; or

(B) an agent of the person requesting the withdrawal; and

(7) the printed name, address, and telephone number of the person requesting the withdrawal.

Added by Acts 1987, 70th Leg., 2nd C.S., ch. 59, § 2, eff. Oct. 20, 1987.

SUBCHAPTER B. INITIAL RECOUNT

§ 212.022. Obtaining Initial Recount in Election on Office

Except as provided by Section 212.0241, a candidate for nomination or election to an office may obtain an initial recount in an election in which the person was a candidate if:

(1) the difference in the number of votes received by the candidate and any candidate for the office who is shown by the election returns to be nominated, elected, or entitled to a place on a runoff ballot or tied for nomination, election, or entitlement to a place on a runoff ballot is less than 10 percent of that candidate's number of votes;

(2) the candidate is shown by the election returns to be entitled to a place on a runoff ballot or tied for nomination, election, or entitlement to a place on a runoff ballot;

(3) the secretary of state certifies that counting errors affecting the election occurred in one or more election precincts in which paper ballots were used, as provided by Section 212.034; or

(4) the total number of votes received by all candidates for the office is less than 1,000 as shown by the election returns.

Amended by Acts 1987, 70th Leg., ch. 484, § 10(a), eff. Sept. 1, 1987; Acts 1997, 75th Leg., ch. 864, § 207, eff. Sept. 1, 1997.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment inserted the exception relating to § 212.0241.

§ 212.023. Obtaining Initial Recount in Election for Presidential Electors

(a) Except as provided by Section 212.0241, an initial recount in a presidential general election may be obtained if one of the grounds prescribed by Section 212.022 is satisfied.

(b) The following persons may obtain an initial recount in a presidential general election:

(1) a presidential candidate whose name appeared on the ballot in this state or who had qualified as a write-in candidate in this state;

(2) one or more presidential elector candidates corresponding to a presidential candidate described by Subdivision (1), acting jointly; or

(3) a presidential candidate described by Subdivision (1) and one or more corresponding elector candidates, acting jointly.

Amended by Acts 1987, 70th Leg., ch. 484, § 10(a), eff. Sept. 1, 1987.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment inserted the exception relating to § 212.0241.

§ 212.0231. Obtaining Initial Recount in Presidential Primary Election

Except as provided by Section 212.0241, in a presidential primary election, a candidate in the election, or any 25 or more persons who were eligible to vote in the election acting jointly on behalf of an uncommitted delegation, may obtain an initial recount in the election if:

§ 212.0231

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(1) the difference in the number of votes received by the candidate or uncommitted status and any candidate or uncommitted status shown by the election returns to be entitled to delegate representation at the political party's national presidential nominating convention is less than 10 percent of the number of votes received by the latter candidate or the uncommitted status; or

(2) the secretary of state certifies that counting errors affecting the election occurred in one or more election precincts in which paper ballots were used, as provided by Section 212.034.

Added by Acts 1986, 69th Leg., 3rd C.S., ch. 14, § 31, eff. Sept. 1, 1987. Amended by Acts 1987, 70th Leg., ch. 484, § 10(a), (b) eff. Sept. 1, 1987.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment inserted the exception relating to § 212.0241.

Section 10(b) of the 1987 amendatory act repealed Acts 1986, 69th Leg., 3rd C.S., ch. 14, § 31, which enacted this section.

Cross References

Counting errors as grounds for recount in paper ballot precincts, persons listed in this section entitled to submit affidavits, see V.T.C.A., Election Code § 212.034.

Petition approved for partial recount in election precincts where paper ballots were used, application for including remaining paper ballot precincts, see V.T.C.A., Election Code § 212.035.

§ 212.024. Obtaining Initial Recount in Election on Measure

(a) Except as provided by Section 212.0241, an initial recount in an election on a measure may be obtained if:

(1) the difference in the number of votes received for the measure and against the measure is less than 10 percent of the total number of votes received on the measure as shown by the election returns;

(2) the secretary of state certifies that counting errors affecting the election occurred in one or more election precincts in which paper ballots were used, as provided by Section 212.034; or

(3) the total number of votes received for and against the measure is less than 1,000 as shown by the election returns.

(b) The following persons may obtain an initial recount in an election on a measure:

(1) the campaign treasurer of a specific-purpose political committee that was involved in the election; or

(2) any 25 or more persons, acting jointly, who were eligible to vote in the election.

Amended by Acts 1987, 70th Leg., ch. 484, § 10(a), eff. Sept. 1, 1987.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment inserted the exception relating to § 212.0241.

§ 212.0241. No Ground Required for Electronic Voting System Recount

(a) A ground for obtaining an initial recount as prescribed by this subchapter is not required to obtain an initial recount of electronic voting system results, subject to Subsection (b).

(b) A candidate for nomination or election to an office may obtain an initial recount of electronic voting system results in an election in which the person was a candidate only if the candidate is shown by the election returns not to be nominated or elected. However, a candidate shown to be nominated or elected may obtain an initial recount if an opposing candidate's initial recount petition is approved for a recount that is covered by Section 212.131(c) and that does not include all of the voting system precincts in the election.

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(c) The secretary of state shall prescribe any procedures necessary to accommodate the authorization to obtain a recount of electronic voting system results without a specific ground.

(d) This section does not affect the scope of a recount as governed by Subchapter F.

Added by Acts 1987, 70th Leg., ch. 484, § 10(a), eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 1349, § 66, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 851, § 5, eff. Sept. 1, 2001.

§ 212.027. Notice of Petition Submission to Other Canvassing Authorities

(a) On submission of a recount petition under Section 212.026(b), the recount coordinator, if the coordinator is not the same person as the presiding officer of the canvassing authority designated by the joint election agreement, shall notify that presiding officer of the submission.

(b) On submission of a recount petition under Section 212.026(d), the recount coordinator shall notify the presiding officer of each of the other canvassing authorities of the submission of the petition.

Amended by Acts 1997, 75th Leg., ch. 864, § 208, eff. Sept. 1, 1997.

§ 212.028. Time for Submitting Petition

(a) Except as provided by Subsection (b), a petition for an initial recount must be submitted by the later of:

(1) 5 p.m. of the fifth day after election day; or

(2) 5 p.m. of the second day after the date the canvassing authority to whose presiding officer the petition must be submitted completes its canvass of the original election returns.

(b) A petition for a winning candidate in response to an opposing candidate's petition as described by Section 212.0241(b) must be submitted not later than 48 hours after receipt of the notice of approval under Section 212.032.

Amended by Acts 1989, 71st Leg., ch. 2, § 7.12, eff. Aug. 28, 1989; Acts 2001, 77th Leg., ch. 851, § 6, eff. Sept. 1, 2001.

Historical and Statutory Notes

1989 Legislation

The 1989 amendment to conform to Acts 1987, 70th Leg., 2nd C.S., ch. 59 deleted "would have convened to canvass the original election returns, if the canvass is delayed by the submission of a

petition, or 5 p.m. of the second day after the date the canvassing authority" following "submitted" in subsec. (2); and deleted ", if the canvass is not delayed" following "original election returns" in subsec. (2).

§ 212.029. Initial Review of Petition

(a) The recount coordinator shall review the petition for compliance with the applicable requirements not later than 48 hours after receipt of the petition.

(b) If the recount petition does not comply with the applicable requirements, the recount coordinator shall promptly notify the petitioner of each defect in the petition and shall enter on the petition a description of each defect and the date of the notice. A deposit in an improper form or amount is a defect for purposes of this subsection.

Amended by Acts 1987, 70th Leg., 2nd C.S., ch. 59, § 3, eff. Oct. 20, 1987.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment in subsec. (a) substituted the requirement that the petition be reviewed

within 48 hours for the requirement that it be reviewed promptly upon submission.

§ 212.030. Amendment of Petition

(a) A petitioner may amend a recount petition to correct a defect.

(b) An amendment must be submitted to the recount coordinator not later than the deadline for submitting the petition or 5 p.m. of the second day after the date notice of the defect under Section 212.029 is received by the petitioner, whichever is later.

(c) On submission of an amendment, the recount coordinator shall enter on the amendment the date and hour it is submitted.

(d) If an amendment is timely, the recount coordinator shall promptly review the petition as amended.

(e) For purposes of this section, a correction of an improper deposit is considered an amendment of the petition.

(f) If the amendment does not correct each defect in the petition of which the petitioner was notified, the recount coordinator shall reject the amended petition. The recount coordinator shall promptly notify the petitioner of each remaining defect and shall enter on the amended petition a description of each defect and the date of notice. A petition may not be amended more than once under this section.

Amended by Acts 1989, 71st Leg., ch. 288, § 1, eff. Sept. 1, 1989.

Historical and Statutory Notes

1989 Legislation

The 1989 amendment added subsec. (f).

§ 212.031. Final Action on Petition

(a) If a recount petition complies with the applicable requirements, the recount coordinator shall approve the petition and note on the petition its approved status and the date of the approval. The recount coordinator shall immediately notify the recount supervisor of the approval. The recount supervisor shall, with the written approval of the recount coordinator, order the recount to be held on a date occurring not later than the seventh day after the date the petition is determined to comply with the applicable requirements.

(b) If the petition does not comply with the applicable requirements, the recount coordinator shall determine whether it is correctable by amendment. If the petition is not correctable, the coordinator shall reject the petition. If the petition is correctable, the coordinator shall delay acting on the petition until the deadline for amending it. If at that time the petition is not corrected, the coordinator shall reject the petition.

(c) On rejecting a petition, the recount coordinator shall note on the petition its rejected status and the reason for and date of the rejection.

(d) After approving or rejecting a petition, the recount coordinator shall promptly notify the petitioner of the action taken.

(e) After approving or rejecting a petition submitted under Section 212.026(b), the recount coordinator, if the coordinator is not the same person as the presiding officer of the canvassing authority designated by the joint election agreement, shall promptly notify that presiding officer of the action taken.

Amended by Acts 1987, 70th Leg., 2nd C.S., ch. 59, § 4, eff. Oct. 20, 1987; Acts 1989, 71st Leg., ch. 288, § 2, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 864, § 209, eff. Sept. 1, 1997.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment in subsec. (a) added the second sentence relating to the recount order.

1989 Legislation

The 1989 amendment, in subsec. (a), inserted "immediately notify the recount supervisor of the

approval. The recount supervisor shall, with the written approval of the recount coordinator,".

§ 212.032. Notice of Approval to Others Involved in Election

After approving a recount petition, the recount coordinator shall promptly notify the following persons of the petition's approval:

- (1) if the recount involves an election for nomination or election to an office, each opposing candidate;
- (2) if the recount involves an election for presidential electors, the presidential candidate who is shown by the election returns to have received the most votes;
- (3) if the recount involves a measure:

(A) the campaign treasurer of each specific-purpose political committee involved in the election on the side opposite the side that the petitioner represents; or

(B) a person eligible to vote in the election, selected by the recount coordinator as an appropriate representative of the interests of the opposite side, if no specific-purpose committee was involved in the election; or

(4) if the recount involves a presidential primary election:

(A) each opposing candidate; and

(B) a registered voter selected by the recount coordinator as an appropriate representative of the interests of the uncommitted delegation, if an uncommitted delegation is entitled to delegate representation.

Amended by Acts 1986, 69th Leg., 3rd C.S., ch. 14, § 32, eff. Sept. 1, 1987.

Historical and Statutory Notes

1986 Legislation

The 1986 amendment added “; or” to the end of subd. (3)(B) and added subd. (4).

Cross References

Withdrawal of recount petition, persons entitled to notice, see V.T.C.A., Election Code § 212.006.

§ 212.033. Effect of Petition Submission on Canvass

(a) The submission of a recount petition before the canvassing authority completes its canvass does not delay the canvass for the office or measure involved in the recount.

(b) The canvassing authority shall make a notation on the tabulation of any office or measure involved in a recount.

Amended by Acts 1987, 70th Leg., 2nd C.S., ch. 59, § 5, eff. Oct. 20, 1987.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment rewrote the section.

§ 212.0331. Effect of Petition Submission on Qualifying for Office

(a) The submission of a recount petition delays the issuance of a certificate of election and qualification for the office involved in the recount pending completion of the recount.

(b) A candidate may not qualify for an office involved in a recount before completion of the recount.

(c) This section does not affect a candidate who has received a certificate of election and qualified for an office before the submission of a recount petition involving the office.

(d) The secretary of state shall prescribe any procedures necessary to implement this section.

Added by Acts 2001, 77th Leg., ch. 1144, § 2, eff. Sept. 1, 2001.

§ 212.034. Counting Errors as Ground for Recount in Paper Ballot Precincts

(a) To obtain a recount on the ground of counting errors in election precincts in which paper ballots were used, a person must attach to the recount petition an affidavit or affidavits from one or more presiding judges of the election stating that certain votes cast for the office or measure, as applicable, were either counted or not counted, as appropriate, with a brief description of the circumstances involved. At the same time the recount petition is submitted to the recount coordinator, the petitioner must deliver a copy of the recount petition and each affidavit to each opposing candidate or to the campaign treasurer of each specific-purpose political committee that was involved in the election on the measure, as appropriate, and to the secretary of state. The copies must be delivered personally or by registered or certified mail, return receipt requested.

(b) The recount coordinator shall delay final action on a recount petition submitted with an attached affidavit under Subsection (a) pending receipt of the secretary of state's certification.

(c) Any opposing candidate or any person listed in Section 212.023(b), 212.0231, or 212.024(b), as appropriate, is entitled to submit to the secretary of state an affidavit contradicting statements made in an affidavit submitted by the petitioner. A contradicting affidavit must be received by the secretary of state not later than the third day after the date the copy of the recount petition and each affidavit is received by the secretary.

(d) A recount on the ground of counting errors may be obtained if the secretary of state determines from uncontradicted statements, based on undisputed facts, in an affidavit submitted by the petitioner and from the election returns that certain votes cast for the office or measure, as applicable, clearly were erroneously counted or not counted, as appropriate, and that without the errors the petitioner possibly would have received the vote necessary to gain or tie for nomination, election, or entitlement to a place on a runoff ballot or the petitioner's side on a measure possibly would have received the most votes, as applicable. The secretary may not make the determination if the facts are disputed or raise unresolved legal questions as to whether counting errors occurred.

(e) Not earlier than the fourth or later than the fifth day after the date the copy of the recount petition and each affidavit is received by the secretary of state, the secretary shall deliver written certification of whether grounds exist for obtaining a recount on the basis of counting errors to the recount coordinator and shall deliver a copy of the certification to the petitioner and to each opposing candidate or to the campaign treasurer of each specific-purpose political committee that was involved in the election on the measure, as appropriate.

Amended by Acts 1986, 69th Leg., 3rd C.S., ch. 14, § 33, eff. Sept. 1, 1987.

Historical and Statutory Notes

1986 Legislation

The 1986 amendment, in subsec. (c), inserted the reference to section 212.0231.

§ 212.035. Application for Including Remaining Paper Ballot Precincts

(a) If a petition is approved for a partial recount in election precincts in which paper ballots were used, any opposing candidate or any person listed in Section 212.023(b), 212.0231, or 212.024(b), as appropriate, may have the remaining election precincts in which paper ballots were used included in the initial recount by submitting an application for including the precincts to the recount coordinator.

(b) The application must be submitted not later than 2 p.m. of the second day after the date the applicant receives notice of the petition's approval.

(c) The application is subject to review, amendment, and action by the recount coordinator in the same manner as a petition submitted under this subchapter.

(d) After approving an application for including remaining precincts, the recount coordinator shall promptly give notice of the approval to the applicant, the petitioner, and any other person entitled to notice under Section 212.032.

Amended by Acts 1986, 69th Leg., 3rd C.S., ch. 14, § 34, eff. Sept. 1, 1987.

Historical and Statutory Notes

1986 Legislation

The 1986 amendment, in subsec. (a), inserted the reference to section 212.0231.

**SUBCHAPTER C. SUPPLEMENTARY RECOUNT FOLLOWING
PARTIAL RECOUNT IN PAPER BALLOT PRECINCTS**

§ 212.053. Obtaining Supplementary Recount

(a) A person who was not entitled to obtain an initial recount on the grounds prescribed by Section 212.022(1) or (2), 212.0231(1), or 212.024(a)(1) may obtain a supplementary recount if

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the partial recount included less than 50 percent of the total vote received by all candidates in the race or for the measure, as applicable, as shown by the original election returns, and as a result of the partial recount those grounds are satisfied.

(b) A person who was not entitled to obtain an initial recount on the grounds prescribed by Section 212.022(1) or (2), 212.0231(1), or 212.024(a)(1) may obtain a supplementary recount if the partial recount included 50 percent or more but less than 75 percent of the total vote received by all candidates in the race or for the measure, as applicable, as shown by the original election returns, and as a result of the partial recount those grounds are satisfied, except that the percentage factor is two percent rather than 10 percent.

Amended by Acts 1986, 69th Leg., 3rd C.S., ch. 14, § 35, eff. Sept. 1, 1987.

Historical and Statutory Notes

1986 Legislation

The 1986 amendment in subsections (a) and (b), inserted the references to section 212.0231(1).

Cross References

Obtaining initial recount, see V.T.C.A., Election Code § 212.0231.

SUBCHAPTER D. EXPEDITED RECOUNT

§ 212.081. Applicability of Subchapter

This subchapter applies to a recount in an election on an office in which:

- (1) a majority vote is required for nomination or election; and
- (2) votes were cast for more than two candidates.

Amended by Acts 1997, 75th Leg., ch. 1349, § 67, eff. Sept. 1, 1997.

§ 212.083. Deadline for Submitting Petition

The deadline for submitting a recount petition under this subchapter is the later of:

- (1) 2 p.m. of the third day after election day; or
- (2) 2 p.m. of the first day after the date of the local canvass.

Amended by Acts 1997, 75th Leg., ch. 1349, § 67, eff. Sept. 1, 1997.

§ 212.085. Deadline for Amending Petition

The deadline for amending a petition under this subchapter is:

- (1) 10 a.m. of the day after the date notice of defect is received, if received at or after 12 midnight and before 12 noon; or
- (2) 4 p.m. of the day after the date notice of defect is received, if received at or after 12 noon and before 12 midnight.

Amended by Acts 1997, 75th Leg., ch. 1349, § 67, eff. Sept. 1, 1997.

SUBCHAPTER E. DEPOSIT FOR COSTS OF RECOUNT

§ 212.112. Amount of Deposit

(a) Subject to Subsection (d), the amount of the recount deposit is determined by the number of precincts for which a recount is requested in the document that the deposit accompanies, in accordance with the following schedule:

- (1) five times the maximum hourly rate of pay for election judges, for a precinct in which:
 - (A) regular paper ballots were used;
 - (B) electronic voting system ballots, other than punch-card ballots, are to be recounted manually; or

(C) both write-in votes and voting system votes are to be recounted;

(2) 10 times the maximum hourly rate of pay for election judges, for a precinct in which punch-card ballots are to be recounted manually;

(3) three times the maximum hourly rate of pay for election judges, for a precinct in which ballots are to be recounted by automatic tabulating equipment and no write-in votes are to be recounted; and

(4) two times the maximum hourly rate of pay for election judges, for a precinct in which:

(A) voting machines were used and no write-in votes are to be recounted; or

(B) only the write-in votes cast in connection with a voting system are to be recounted.

(b) In a recount of an election for which a majority vote is required for nomination or election to an office, the rate prescribed by Subsection (a)(1)(C) applies to each precinct in which a voting system was used, regardless of whether any write-in votes were cast in the precinct, if:

(1) the original election results show that write-in votes were cast in the election; and

(2) an exclusion of write-in votes from the recount is not obtained under Section 212.136.

(c) If more than one method of voting is used for early voting, each additional method of voting used for the early voting shall be treated as constituting an additional precinct in determining the amount of a recount deposit for a recount of early voting votes.

(d) The minimum amount of a deposit accompanying a petition for a recount is \$50.

Amended by Acts 1987, 70th Leg., 2nd C.S., ch. 59, § 6, eff. Oct. 20, 1987; Acts 1991, 72nd Leg., ch. 203, § 2.66; Acts 1991, 72nd Leg., ch. 554, § 37, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 141.034.

§ 212.113. Return of Deposit

(a) On rejection of a recount document, the recount coordinator shall return the recount deposit to the person who submitted the document.

(b) On the timely withdrawal of a recount document, the recount coordinator shall return to the person who submitted the document the recount deposit less any necessary expenditures made toward the conduct of the recount before the request for withdrawal was received.

(c) The recount coordinator shall return to each person requesting a recount whose chosen counting method is not used under Section 212.005(d) the recount deposit less any necessary expenditures made toward the conduct of the recount before the other counting method was determined to be the preferential method.

Amended by Acts 1987, 70th Leg., 2nd C.S., ch. 59, § 7, eff. Oct. 20, 1987; Acts 1997, 75th Leg., ch. 1349, § 68, eff. Sept. 1, 1997.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment provided for return of the recount deposit, less any necessary expenditures,

in the event of withdrawal of the recount document.

SUBCHAPTER F. SCOPE OF RECOUNT

§ 212.131. Scope of Initial Recount

(a) Except as provided by Subsection (d), an initial recount in an election for which there is no canvass at the state level must include each election precinct in the election.

(b) In an election for which there is a final canvass at the state level, an initial recount of votes cast on paper ballots must include each election precinct in which paper ballots were used in the election, except as provided by Subsection (d).

(c) In an election for which there is a final canvass at the state level, an initial recount of votes cast in a particular voting system may include any one or more counties covered by the election, but must include all the election precincts in which a particular voting system is used in each county recounted.

(d) An initial recount may include any one or more election precincts in which counting errors occurred as certified by the secretary of state under Section 212.034.

Amended by Acts 2001, 77th Leg., ch. 851, § 7, eff. Sept. 1, 2001.

§ 212.134. Early Voting Votes Treated as Precinct

(a) Except as provided by Subsection (b), for the purpose of specifying which election precincts are to be included in a recount, all the early voting votes canvassed by a local canvassing authority shall be treated as constituting one election precinct.

(b) Each early voting polling place in which voting machines were used shall be treated as constituting one election precinct.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.67; Acts 1991, 72nd Leg., ch. 554, § 38, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 141.034.

§ 212.137. Objection to Exclusion of Votes

(a) The notice of approval of a recount document in which an exclusion of votes is requested under Section 212.136 must include notice that the exclusion has been requested.

(b) The votes subject to the requested exclusion may not be excluded if a candidate entitled to notice under Subsection (a) notifies the recount coordinator not later than 18 hours after receiving the notice that the candidate objects to the exclusion.

(c) The sufficiency of the deposit accompanying a recount document requesting an exclusion is not affected by a timely objection to the exclusion, but the candidate is liable for the full costs of the recount, including the costs attributable to the recount of the votes requested to be excluded, if the costs are assessed against the candidate.

Amended by Acts 1997, 75th Leg., ch. 864, § 210, eff. Sept. 1, 1997.

CHAPTER 213. CONDUCT OF RECOUNT

SUBCHAPTER A. CONDUCT OF RECOUNT GENERALLY

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SUBCHAPTER B. ELECTIONS WITHOUT STATE LEVEL CANVASS

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SUBCHAPTER C. ELECTIONS WITH STATE LEVEL CANVASS

213.057.	Canvass Following Recount.
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213.059.	General Election for Governor or Lieutenant Governor.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

SUBCHAPTER A. CONDUCT OF RECOUNT GENERALLY

Library References

Election challenges, recounts, see Brooks, 35
Texas Practice § 11.24.

§ 213.002. Recount Committee

(a) Before beginning a recount, each recount supervisor shall appoint a recount committee composed of as many members as the supervisor determines are necessary for a speedy recount. The committee must be composed of at least four members. The recount coordinator may appoint one member.

(b) The recount supervisor shall appoint a chair from the membership.

(c) The recount committee shall count the votes in a recount under the direct management and supervision of the chair. The recount supervisor or the supervisor's designee may exercise the chair's authority when present during the counting process.

Amended by Acts 1987, 70th Leg., 2nd C.S., ch. 59, § 8, eff. Oct. 20, 1987; Acts 1989, 71st Leg., ch. 288, § 3, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 864, § 211, eff. Sept. 1, 1997.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment in subsec. (a) provided for the appointment of a recount committee member by the recount coordinator.

1989 Legislation

The 1989 amendment, in subsec. (a), in the third sentence, substituted "may" for "shall".

§ 213.003. Eligibility for Committee Membership

(a) Except as provided by Subsections (b) and (c), to be eligible for appointment as a member of a recount committee, a person must be a qualified voter of the political subdivision served by the recount supervisor and must otherwise meet the eligibility requirements prescribed by this code for precinct election judges and clerks. A person who served as an election judge or as judge of the early voting ballot board in the election is ineligible to serve as a member of the recount committee. An officer of a political party is eligible to serve as a member of the committee.

(b) A tabulation supervisor, assistant tabulation supervisor, or manager of a central counting station appointed in a recount using automatic tabulating equipment to recount ballots originally counted at a central counting station is not subject to Subsection (a).

(c) A person who is appointed as a member of a recount committee by the secretary of state or a state party chair and who otherwise meets the eligibility requirements prescribed by this code for precinct election judges and clerks is eligible for appointment regardless of whether the person is a qualified voter of the political subdivision served by the recount supervisor.

Amended by Acts 1987, 70th Leg., 2nd C.S., ch. 59, § 9, eff. Oct. 20, 1987; Acts 1989, 71st Leg., ch. 288, § 4, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 203, § 2.68; Acts 1991, 72nd Leg., ch. 554, § 39, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 864, § 212, eff. Sept. 1, 1997.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 141.034.

§ 213.005. Counting Teams

(a) A recount committee in a recount other than a recount on automatic tabulating equipment shall function as one or more counting teams composed of three members each. The recount coordinator may appoint one member of each team.

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(b) Subject to the authority of the recount supervisor or the supervisor's designee, the recount committee chair shall designate the members to serve on each team and the duties to be performed by each member.

Amended by Acts 1987, 70th Leg., 2nd C.S., ch. 59, § 10, eff. Oct. 20, 1987; Acts 1993, 73rd Leg., ch. 728, § 74, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 864, § 213, eff. Sept. 1, 1997.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment in subsec. (a) provided for appointment of one member of each counting team by the recount coordinator.

§ 213.006. Determination of Counting Questions

(a) The recount committee chair has the same authority as a presiding election judge to determine whether a particular ballot may be lawfully counted and how a voter's marking of a ballot should be interpreted.

(b) After consulting the recount coordinator's appointee, the recount committee chair shall prepare a written statement of the specific reasons for not counting a particular ballot. Any uncounted ballots shall be kept separately in the appropriate container.

(c) Early voting ballots rejected by the early voting ballot board may not be counted in the recount.

Amended by Acts 1987, 70th Leg., 2nd C.S., ch. 59, § 11, eff. Oct. 20, 1987; Acts 1991, 72nd Leg., ch. 203, § 2.69; Acts 1991, 72nd Leg., ch. 554, § 40, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 864, § 214, eff. Sept. 1, 1997.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 141.034.

§ 213.007. Access to Ballots, Equipment, and Other Materials

(a) On presentation by a recount committee chair of a written order signed by the recount supervisor, the custodian of voted ballots, voting machines or test materials or programs used in counting electronic voting system ballots shall make the ballots, machines, or materials or programs available to the committee.

(b) The custodian of keys to secured materials or equipment shall make the keys available to the committee in the same manner as provided by Subsection (a).

(c) The recount committee chair shall have the materials and equipment restored to their secured condition and returned to the appropriate custodian.

Amended by Acts 1997, 75th Leg., ch. 864, § 215, eff. Sept. 1, 1997.

§ 213.0111. Recount of Disputed Ballots

(a) On receipt of an affidavit executed by any recount committee member alleging that legal votes were not counted or illegal votes were counted during the initial recount, the recount coordinator may order a new recount of the disputed ballots. For a county or precinct office in a primary election, the county chair may order the new recount only on the approval of the state chair.

(b) The affidavit must be received by the recount coordinator within 48 hours after the determination of the results of the initial recount.

(c) Notice of the new recount shall be given in the manner prescribed by Section 213.009 for an initial recount.

(d) The new recount must begin not later than the seventh day after the date the notice is given.

(e) The recount coordinator shall appoint a recount committee to conduct the new recount. Added by Acts 1987, 70th Leg., 2nd C.S., ch. 59, § 12, eff. Oct. 20, 1987. Amended by Acts 1993, 73rd Leg., ch. 759, § 1, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 864, § 216, eff. Sept. 1, 1997.

§ 213.012. Committee Report of Recount

(a) After the recount is completed, the recount committee chair shall prepare a report of the committee's vote count and sign the report. Votes shall be reported separately by precinct.

(b) The chair shall deliver one copy of the report to the recount supervisor and one copy to the general custodian of election records.

(c) The copies of the report shall be preserved for the period for preserving the precinct election records.

Amended by Acts 1997, 75th Leg., ch. 864, § 217, eff. Sept. 1, 1997.

§ 213.013. Representation of Parties and Political Parties at Recount

(a) Each person entitled to notice of the recount under Section 213.009 is entitled to be present at a recount.

(b) In a recount of an election on an office, each candidate for the office is entitled to be present at the recount and have representatives present in the number corresponding to the number of counting teams designated for the recount. If only one counting team is designated or the recount is conducted on automatic tabulating equipment, each candidate is entitled to two representatives.

(c) In a recount of an election on an office for which a political party has a nominee or for which a candidate is aligned with a political party, the party is entitled to have representatives present in the same number prescribed for candidates under Subsection (b).

(d) In a recount of an election on a measure, representatives may be appointed by the campaign treasurer or assistant campaign treasurer of a specific-purpose political committee that supports or opposes the measure in the number corresponding to the number of counting teams designated for the recount. If only one counting team is designated or the recount is conducted on automatic tabulating equipment, each eligible specific-purpose political committee is entitled to two representatives.

(e) A representative appointed to serve at a recount must deliver a certificate of appointment to the recount committee chair at the time the representative reports for service. A representative who presents himself or herself for service at any time immediately before or *during the recount and submits a proper certificate of appointment* must be accepted for service unless the number of appointees to which the appointing authority is entitled have already been accepted.

(f) The certificate must be in writing and must include:

- (1) the printed name and the signature of the representative;
- (2) the election subject to the recount;
- (3) the time and place of the recount;
- (4) the measure, candidate, or political party being represented;
- (5) the signature and the printed name of the person making the appointment; and
- (6) an indication of the capacity in which the appointing authority is acting.

(g) If the representative is accepted for service, the recount committee chair shall keep the certificate and deliver it to the recount coordinator after the recount for preservation under Section 211.007. If the representative is not accepted for service, the recount committee chair shall return the certificate to the representative with a signed statement of the reason for the rejection.

(h) Each person entitled to be present at a recount is entitled to observe any activity conducted in connection with the recount. The person is entitled to sit or stand conveniently near the officers conducting the observed activity and near enough to an officer who is announcing the votes or examining or processing the ballots to verify that the ballots are counted or processed correctly or to an officer who is tallying the votes to verify that they are tallied correctly. Rules concerning a representative's rights, duties, and privileges are

RECOUNTS

§ 213.033

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otherwise the same as those prescribed by this code for poll watchers to the extent they can be made applicable.

(i) No mechanical or electronic means of recording images or sound are allowed inside the room in which the recount is conducted, or in any hallway or corridor in the building in which the recount is conducted within 30 feet of the entrance to the room, while the recount is in progress. However, on request of a person entitled to appoint representatives to serve at the recount, the recount committee chair shall permit the person to photocopy under the chair's supervision any ballot, including any supporting materials, challenged by the person or person's representative. The person must pay a reasonable charge for making the copies and, if no photocopying equipment is available, may supply that equipment at the person's expense. The person shall provide a copy on request to another person entitled to appoint representatives to serve at the recount.

Amended by Acts 1987, 70th Leg., 2nd C.S., ch. 59, § 13, eff. Oct. 20, 1987; Acts 1993, 73rd Leg., ch. 728, § 75, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 864, § 218, eff. Sept. 1, 1997.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment added subsecs. (c) to (i).

§ 213.015. Bystanders Excluded

(a) Only persons that are specifically permitted by law to attend a recount may be inside the room in which the recount is conducted, or in any hallway or corridor in the building in which the recount is conducted within 30 feet of the entrance to the room, while the recount is in progress.

(b) A recount committee chair has the same authority as that of a presiding judge at a polling place to preserve order during the recount.

Added by Acts 1987, 70th Leg., 2nd C.S., ch. 59, § 14, eff. Oct. 20, 1987. Amended by Acts 1997, 75th Leg., ch. 864, § 219, eff. Sept. 1, 1997.

SUBCHAPTER B. ELECTIONS WITHOUT STATE LEVEL CANVASS

§ 213.033. Canvass Following Recount

(a) As soon as practicable after completion of a recount that changes the number of votes received for a particular candidate or for or against a measure, the canvassing authority shall conduct a canvass for the office or measure involved using the recount committee's report in the recount supervisor's possession, instead of the original precinct election returns, for each precinct in which a recount was conducted. An original canvass for the office or measure is void, and the new canvass is the official canvass for the election on that office or measure. If no change occurs in the recount in the number of votes received for a candidate or for or against a measure, the official result of the election is determined from the original canvass.

(b) In a recount of an election in which there is more than one local canvassing authority, the result of the canvass conducted under this section shall be reported to the other canvassing authorities in the same manner as the result of an original canvass.

(c) The appropriate authority shall take any further action that may be necessary in the same manner as for an original canvass.

Amended by Acts 1987, 70th Leg., 2nd C.S., ch. 59, § 15, eff. Oct. 20, 1987; Acts 1993, 73rd Leg., ch. 759, § 2, eff. Sept. 1, 1993.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment rewrote subsec. (a), deleted subsec. (b) and redesignated former subsecs. (c) and (d) as subsecs. (b) and (c).

Library References

Election challenges, recounts, see Brooks, 35
Texas Practice § 11.24.

SUBCHAPTER C. ELECTIONS WITH STATE LEVEL CANVASS

§ 213.057. Canvass Following Recount

As soon as practicable after completion of a recount that changes the number of votes received for a particular candidate or for or against a measure, the final canvassing authority shall conduct a canvass for the office or measure involved using the recount supervisor's report, instead of the original county election returns, for each county in which a recount was conducted. An original final canvass for the office or measure is void, and the new final canvass is the official final canvass for the election on that office or measure. If no change occurs in the recount in the number of votes received for a candidate or for or against a measure, the official result of the election is determined from the original final canvass.

Amended by Acts 1987, 70th Leg., 2nd C.S., ch. 59, § 16, eff. Oct. 20, 1987; Acts 1993, 73rd Leg., ch. 759, § 3, eff. Sept. 1, 1993.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment in the first sentence inserted "that changes the result of an election" and added the second sentence.

§ 213.058. Canvass Following Expedited Recount

(a) Unless a person entitled to notice under Section 213.056 makes an objection to the recount coordinator before the canvass resulting from a recount, the final canvassing authority may use results reported to the recount coordinator by telephone or telegraph under Section 213.054 as the basis for its canvass following an expedited recount if the orderly conduct of a runoff election would be disrupted by delaying the canvass until the recount supervisors' written reports are received.

(b) If an objection is made under Subsection (a), the recount coordinator shall ascertain the grounds for the objection and shall verify with the appropriate recount supervisor each result to which objection is made. If the verification changes the overall result as originally determined by the coordinator, the coordinator shall give notice of the change to the persons entitled to receive the original notice of the result and shall continue the verification process until no objection exists. The canvass may then be conducted on the basis of telephone or telegraph reports as verified.

(c) If a canvass is conducted on the basis of results reported by telephone or telegraph, on receiving a recount supervisor's written report, the recount coordinator shall compare the report with the result used in the canvass. If a discrepancy exists, the coordinator shall ascertain the correct vote count from the supervisor. The supervisor shall deliver a corrected written report to the coordinator if the original written report is incorrect.

(d) If a discrepancy that affects the outcome of the election is discovered in the comparison made under Subsection (c), the recount coordinator shall immediately call a meeting of the canvassing authority or notify the governor, as applicable, to conduct another canvass and shall take the necessary action for correction of the ballots for the runoff election. If discovered discrepancies do not affect the outcome, the coordinator shall correct the canvassing authority's vote tabulation to conform to the written reports.

Amended by Acts 1987, 70th Leg., 2nd C.S., ch. 59, § 17, eff. Oct. 20, 1987; Acts 1989, 71st Leg., ch. 163, § 6, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 759, § 4, eff. Sept. 1, 1993.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment in subsec. (a) inserted "resulting from a recount that changed the result of the election".

1989 Legislation

The 1989 amendment in subsec. (d) inserted "or notify the governor, as applicable,".

§ 213.059. General Election for Governor or Lieutenant Governor

(a) A recount in a general election for the office of governor or lieutenant governor shall be conducted in the same manner as a recount of a general election for a state office in which the final canvass is made by the governor, except as provided by this section.

(b) The governor is considered to be the final canvassing authority for the election and the secretary of state's tabulation of the county election returns is considered to be the declaration of the official result.

(c) The recount supervisor shall deliver two copies of the report prepared under Section 213.055 to the secretary of state. The secretary shall use one copy for the tabulation of the votes after the recount is completed. The secretary shall deliver the other copy to the speaker of the house of representatives.

Amended by Acts 1989, 71st Leg., ch. 163, § 7, eff. Sept. 1, 1989.

Historical and Statutory Notes

1989 Legislation

The 1989 amendment substituted references to the governor and the secretary of state for refer-

ences to the state board of canvassers and the recount coordinator.

CHAPTER 214. COUNTING PROCEDURES

SUBCHAPTER A. MANUALLY
COUNTED BALLOTS

Section

- 214.002. Counting Procedure.
- 214.003. Disposition of Tally Lists.

SUBCHAPTER B. VOTES CAST
ON MECHANICAL VOTING
MACHINE

- 214.022. Recount Method.
- 214.026. Disposition of Recount Returns.

Section

SUBCHAPTER C. BALLOTS COUNTED
BY AUTOMATIC TABULATING
EQUIPMENT

- 214.042. Counting Method for Recount.
- 214.045. Composition of Committee.
- 214.046. Test of Program and Equipment.
- 214.049. Counting Procedure.
- 214.051. Disposition of Recount Returns.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

SUBCHAPTER A. MANUALLY COUNTED BALLOTS

§ 214.002. Counting Procedure

(a) One member of a counting team shall read the ballots, and the other two members shall tally the votes as the ballots are read.

(b) The count shall be made, and the correctness of the tally lists shall be certified, in the same manner as an original count of regular paper ballots, except that:

- (1) only two tally lists are prepared; and
- (2) Section 127.130(d) applies to a count of punch-card ballots.

Amended by Acts 1993, 73rd Leg., ch. 728, § 76, eff. Sept. 1, 1993.

§ 214.003. Disposition of Tally Lists

(a) On completion of the count for a precinct, a member of the counting team shall place one tally list in the ballot box containing the voted ballots and shall deliver the other tally list to the recount committee chair.

(b) The recount committee chair shall use the tally list received from the counting team in preparing the committee report of the recount. The chair shall attach the tally list to the copy of the committee report that is to be delivered to the recount supervisor. The attached tally list is part of the report.

Amended by Acts 1997, 75th Leg., ch. 864, § 220, eff. Sept. 1, 1997.

SUBCHAPTER B. VOTES CAST ON MECHANICAL VOTING MACHINE

§ 214.022. Recount Method

(a) A recount of votes cast on mechanical voting machines is conducted by comparing the results registered on the registering counters with the results recorded on the original election returns.

(b) The recount committee chair shall designate one member of each counting team to perform the duties of a presiding judge at a polling place using voting machines in verifying and certifying the precinct recount returns.

(c) In this subchapter, "recount returns" means verified, corrected original election returns prepared under Section 214.023.

(d) The recount returns shall be prepared as one original document.

Amended by Acts 1997, 75th Leg., ch. 864, § 221, eff. Sept. 1, 1997.

§ 214.026. Disposition of Recount Returns

(a) After a counting team certifies the recount returns for a precinct, a member of the team shall deliver the returns to the recount committee chair.

(b) The recount committee chair shall use the recount returns in preparing the committee report of the recount. The chair shall attach the recount returns to the copy of the committee report that is to be delivered to the recount supervisor. The attached returns are part of the report.

Amended by Acts 1997, 75th Leg., ch. 864, § 222, eff. Sept. 1, 1997.

SUBCHAPTER C. BALLOTS COUNTED BY AUTOMATIC
TABULATING EQUIPMENT

§ 214.042. Counting Method for Recount

(a) A person requesting a recount of electronic voting system ballots has a choice of:

- (1) an electronic recount using the same program as the original count;
- (2) an electronic recount using a corrected program under Section 214.046(c), if obtainable; or
- (3) a manual recount as provided by Subchapter A.

(b) The same counting method must be used in all precincts included in the recount document for which the same program was used in the original count.

(c) Unless a different counting method is requested, the ballots shall be counted electronically using the same program as the original count.

(d) Except as otherwise provided by this subchapter, a request for a specific counting method must be made in the recount document, specifying the precincts to which the request applies if it does not apply to all precincts in which electronic voting system ballots are to be recounted.

(e) After a recount document is approved, the person requesting the recount may change the counting method specified in the document by filing with the appropriate recount supervisor a written request for a different method before the supervisor gives notice of the time and place for beginning the recount. If the requested change is to a manual recount, the

request must be accompanied by a cashier's check payable to the recount coordinator in the amount of the difference between the amount of the deposit for a manual recount and the amount for an electronic recount.

(f) If a recount supervisor who receives a request for a change to a manual recount under Subsection (e) is not also the recount coordinator, the supervisor shall notify the coordinator of the change and shall deliver the accompanying check to the coordinator.

Amended by Acts 1987, 70th Leg., 2nd C.S., ch. 59, § 18, eff. Oct. 20, 1987.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment in subsec. (a)(3) inserted "as provided by Subchapter A".

§ 214.045. Composition of Committee

(a) The recount committee chair shall designate one member of the recount committee for an electronic recount to operate the automatic tabulating equipment. In this subchapter, "recount tabulator" means the member designated to operate the equipment.

(b) In a recount of ballots originally counted at a central counting station, the recount tabulator must be the tabulation supervisor of the station, an assistant to the supervisor, or a person approved by the supervisor.

(c) In a recount of ballots originally counted at a polling place, the recount tabulator must be a person who has served as an election officer at a polling place using the type of equipment on which the recount is made and must have had experience in operating the equipment.

(d) At least one member of the recount committee other than the recount tabulator must have had experience in operating the type of equipment on which the recount is made.
Amended by Acts 1997, 75th Leg., ch. 864, § 223, eff. Sept. 1, 1997.

§ 214.046. Test of Program and Equipment

(a) After the time set for beginning an electronic recount but before the recount is made, the recount tabulator shall conduct a test of the program and equipment in the same manner as the test that is conducted immediately before an original count of ballots for an election. Each person entitled to notice of the recount or the person's representative at the recount is entitled to examine the program and the test materials on request.

(b) If the test is unsuccessful, the recount tabulator shall notify the recount committee chair, who shall notify the recount supervisor, and the supervisor shall investigate the cause of the test's failure. The electronic recount may not proceed until a test is successful on the equipment used for the first test or on other equipment selected by the supervisor.

(c) If the recount supervisor determines that the program is defective, the supervisor shall inform the person requesting the recount or the person's agent. The person requesting the recount may notify the supervisor:

- (1) to have the ballots recounted manually; or
- (2) to attempt to correct the program so that an electronic recount may be conducted with the corrected program.

(d) A recount using a corrected program may not be made unless the tabulation supervisor of the central counting station or the presiding election judge of the polling place at which the ballots were counted, as applicable, and the person who prepared the program sign a written statement indicating that the original program is defective. If the statement cannot be obtained, the recount supervisor shall have the ballots recounted manually.

(e) If a recount using a corrected program is to be made, the original program shall be preserved without change and a complete new program shall be prepared. The original set of test materials shall also be preserved without change and a complete new set shall be prepared if the original set is unsuitable for testing the corrected program.

(f) The recount supervisor shall obtain from the person who prepares a new program a signed statement that the program was prepared by the person, with the date of preparation

and the person's address shown on the statement. The new program, the preparer's statement, and the test materials used for verification shall be preserved in a sealed container in the same manner and for the same period as the original program.

(g) The costs of a recount under Subsection (c) may not be assessed against a person regardless of its outcome. If other precincts are included in the same recount document, the assessment of the costs in the other precincts shall be determined by the overall outcome in all precincts included in the document.

Amended by Acts 1997, 75th Leg., ch. 864, § 224, eff. Sept. 1, 1997.

§ 214.049. Counting Procedure

(a) All members of the recount committee in an electronic recount shall be present during the testing of the program and equipment and during the counting of the ballots. The other members of the committee may assist the recount tabulator in the handling of the test materials and the ballots, but only the tabulator may operate the equipment.

(b) After the ballots are counted, a member of the recount committee shall prepare returns for each precinct in the same manner as original election returns are prepared, except that the returns shall be prepared as an original and one copy.

(c) If it is necessary to count any of the ballots manually, other than write-in votes, the recount committee shall count the ballots, and a member shall enter the result of the count on the returns.

(d) Except as otherwise provided by this subchapter, the ballots shall be processed in the manner prescribed by Sections 127.125 and 127.126. Before the tabulation of duplicate ballots, the recount committee chair shall compare the duplicate ballot with the original to verify that the original ballot was duplicated properly. If the original ballot was duplicated improperly, the recount committee chair shall have the original ballot duplicated properly and that duplicate ballot shall be counted. The improper duplicate ballot shall be retained and the recount committee chair shall make a notation on the improper duplicate ballot of the reason for which it was not counted.

(e) If electronic voting system ballots are to be recounted manually, the original ballot, rather than the duplicate of the original ballot, shall be counted.

Amended by Acts 1987, 70th Leg., 2nd C.S., ch. 59, § 19, eff. Oct. 20, 1987; Acts 1997, 75th Leg., ch. 864, § 225, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 851, § 8, eff. Sept. 1, 2001.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment added subsecs. (d) and (e).

§ 214.051. Disposition of Recount Returns

(a) After the recount committee certifies the recount returns for a precinct, a member of the committee shall place the copy of the returns in the ballot box containing the voted ballots and shall deliver the original to the recount committee chair.

(b) The recount committee chair shall use the returns received from the recount committee in preparing the committee report of the recount. The chair shall attach the recount returns to the copy of the committee report that is to be delivered to the recount supervisor. The attached returns are part of the report.

Amended by Acts 1997, 75th Leg., ch. 864, § 226, eff. Sept. 1, 1997.

CHAPTER 215. COSTS OF RECOUNT

Section

215.002. Assessable Costs.

Section

215.005. Administration of Costs.

215.010. Collection of Costs.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

Library References

Election challenges, recounts, see Brooks, 35
Texas Practice § 11.24.

§ 215.002. Assessable Costs

Only the following costs of a recount are assessable against a person:

- (1) compensation of members of a recount committee as provided by Section 213.004;
- (2) charges for use of automatic tabulating equipment as provided by Section 214.044;
- (3) a service charge of \$15 for each recount supervisor involved in the recount as a reimbursement to the fund from which the telephone, postage, and other office expenses of the recount supervisor are paid; and
- (4) in a recount of an election for which the final canvass is at the state level, a service charge of \$15 for each recount supervisor involved in the recount plus an additional \$50 as a reimbursement to the fund from which the telephone, postage, and other office expenses of the recount coordinator are paid.

Amended by Acts 1987, 70th Leg., 2nd C.S., ch. 59, § 20, eff. Oct. 20, 1987.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment in subd. (4) increased the additional reimbursement charge from \$15 to \$50.

§ 215.005. Administration of Costs

(a) The recount coordinator shall determine the allocation of the costs of a recount and dispose of the recount deposits. The coordinator shall make the disposition as soon as practicable after a recount is completed.

(b) In a recount of an election for which there is no canvass at the state level, other than a primary election, the recount coordinator shall place the deposit of a person against whom costs are assessed in the fund from which the expenses of the recount are payable. If the person is entitled to a refund, the authority receiving the deposit shall issue a warrant in the appropriate amount to the person.

(c) In a recount of an election for which the final canvass is at the state level, other than a primary election, the recount coordinator shall deliver the deposit of a person against whom costs are assessed to the comptroller of public accounts, who shall place the deposit in trust. The comptroller shall issue a warrant in the amount certified by the coordinator to each county in which assessed costs were incurred and to the person for any refund to which the person is entitled.

(d) The secretary of state shall prescribe procedures for the administration of costs of a recount in a primary election.

Amended by Acts 1997, 75th Leg., ch. 1423, § 6.03, eff. Sept. 1, 1997.

§ 215.010. Collection of Costs

(a) If a person is assessed costs in an amount that exceeds the amount of the person's deposit, the recount coordinator shall take appropriate action to obtain payment of the amount owed.

(b) If an amount owed is unpaid on the 90th day after the date payment is demanded, the recount coordinator shall refer the matter to the appropriate authority for legal action to collect the amount owed.

(c) On referral of an amount for collection under Subsection (b), the recount coordinator and each recount supervisor involved in the recount shall deliver to the authority to whom the

referral is made the originals or copies of documents, records, or other papers in the coordinator's or supervisor's possession that may be relevant to enforcement of the claim. The coordinator may not deliver the original of a document during the period for preserving the precinct election records.

Amended by Acts 1997, 75th Leg., ch. 864, § 227, eff. Sept. 1, 1997.

CHAPTER 216. AUTOMATIC RECOUNT

Section		Section	
216.001.	Applicability of Chapter.	216.003.	Initiating Automatic Recount.
216.002.	Conduct of Automatic Recount Generally.	216.004.	Counting Procedures.
		216.005.	Cost of Automatic Recount.

§ 216.001. Applicability of Chapter

This chapter applies only to an election that results in a tie vote as provided by Section 2.002(i).

Added by Acts 2001, 77th Leg., ch. 851, § 3, eff. Sept. 1, 2001.

§ 216.002. Conduct of Automatic Recount Generally

Except as otherwise provided by this chapter, this title applies to a recount conducted under this chapter with appropriate modifications as prescribed by the secretary of state.

Added by Acts 2001, 77th Leg., ch. 851, § 3, eff. Sept. 1, 2001.

§ 216.003. Initiating Automatic Recount

For purposes of initiating an automatic recount, the authority designated under Section 212.026 shall request the recount in the same manner as a recount petitioner under this title.

Added by Acts 2001, 77th Leg., ch. 851, § 3, eff. Sept. 1, 2001.

§ 216.004. Counting Procedures

The method of counting votes in an automatic recount is the same method of counting used in the election that resulted in the tie vote.

Added by Acts 2001, 77th Leg., ch. 851, § 3, eff. Sept. 1, 2001.

§ 216.005. Cost of Automatic Recount

(a) Subchapter E, Chapter 212, does not apply to an automatic recount.

(b) The costs of an automatic recount shall be paid by each political subdivision or county executive committee, as applicable, served by a presiding officer designated under Section 213.001.

Added by Acts 2001, 77th Leg., ch. 851, § 3, eff. Sept. 1, 2001.

TITLE 14. ELECTION CONTESTS

WESTLAW Computer Assisted Legal Research

WESTLAW supplements your legal research in many ways. WESTLAW allows you to

- update your research with the most current information
- expand your library with additional resources
- retrieve direct history, precedential history and parallel citations with the Insta-Cite service

For more information on using WESTLAW to supplement your research, see the WESTLAW Electronic Research Guide, which follows the Preface.

Library References

Election challenges, contests, see Brooks, 35
Texas Practice § 11.23.

SUBTITLE A. INTRODUCTORY PROVISIONS

CHAPTER 221. GENERAL PROVISIONS

Section

221.001. Applicability of Title.
221.002. Jurisdiction.
221.005. Date of Determination of Official Result
of Election.

Section

221.008. Examination of Secured Ballots and
Equipment.
221.009. Compelling Voter to Reveal Vote.
221.015. Right to Occupy Office Involved in Con-
test.

Library References

Tex. Prac., County and Special District Law, ch.
11.
Party nominations, see Brooks, 35 Texas Prac-
tice § 11.21.

Election challenges, contests, see Brooks, 35
Texas Practice § 11.23.

§ 221.001. Applicability of Title

This title does not apply to:

- (1) a general or special election for the office of United States senator or United States representative;
- (2) an election on a measure that is for advisory purposes only; or
- (3) a presidential primary election.

Amended by Acts 1986, 69th Leg., 3rd C.S., ch. 14, § 35, eff. Sept. 1, 1987.

Historical and Statutory Notes

1986 Legislation

The 1986 amendment add “; or” to the end of
subd. (2) and added subd. (3).

§ 221.002. Jurisdiction

(a) Except as otherwise provided by this section, the district court has exclusive original jurisdiction of an election contest.

(b) The senate and the house of representatives, in joint session, have exclusive jurisdiction of a contest of a general election for governor, lieutenant governor, comptroller of public accounts, commissioner of the general land office, or attorney general.

(c) The senate has exclusive jurisdiction of a contest of a general or special election for state senator.

(d) The house of representatives has exclusive jurisdiction of a contest of a general or special election for state representative.

(e) The governor has exclusive jurisdiction of a contest of the election of presidential electors.

(f) The court of appeals has appellate jurisdiction of contests originating in the district court.

Amended by Acts 1989, 71st Leg., ch. 163, § 8, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 1423, § 6.04, eff. Sept. 1, 1997.

Historical and Statutory Notes

1989 Legislation

The 1989 amendment in subsec. (e) substituted "governor" for "state board of canvassers".

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9. Home rule elections

State ex rel. Kimmons v. City of Azle (Civ.App. 1979) 588 S.W.2d 666, [main volume] ref. n.r.e..

20. Notice, generally

Individual who holds certificate of election, rather than a member of school board who has participated in certifying election results, is proper contestee in school board trustee contest, and thus notice of contest did not have to be given to a school board member; declining to follow *Zavalletta v. Parker*, 611 S.W.2d 466. *Jordan v. Norman* (App. 9 Dist. 1986) 711 S.W.2d 358.

26. Court of Appeals—In general

Appellate jurisdiction of election contests originating in district court can be destroyed if contest becomes moot. *Moore v. Barr* (App. 14 Dist. 1986) 718 S.W.2d 925.

31. — Mandamus, Court of Appeals

Despite time constraints, appeal of election contest is not untenable; remedy by appeal is available, and when pursued diligently, appellate court will diligently labor to expedite and consider appeal on its merits. *Salazar v. Gonzales* (App. 13 Dist. 1996) 931 S.W.2d 59.

35. Moot contests

Election contest becomes moot, and issues no longer justiciable, when final judgment adjudging validity or invalidity of candidate's certificate of nomination is not entered in time for election officials to comply with statutory deadlines for preparing and conducting general election, or when absentee balloting has begun during pendency of the appeal. *Salazar v. Gonzales* (App. 13 Dist. 1996) 931 S.W.2d 59.

Election contest with regard to primary runoff election for county commissioner was moot where early voting for general election had begun in accordance with statute, even though particular county had not yet mailed ballots to voters as of time of appeal. *Salazar v. Gonzales* (App. 13 Dist. 1996) 931 S.W.2d 59.

§ 221.003. Scope of Inquiry

Law Review and Journal Commentaries

Consideration of illegal votes in legislative election contests. Robert A. Junell, Curtis L. Seidlits,

Jr., and Glen G. Shuffler, 28 *Tex.Tech L.Rev.* 1095 (1997).

Notes of Decisions

Discretion of court 18
 Polling places 7.5
 Review 19

1. In general

Miller v. Hill (App. 14 Dist. 1985) 698 S.W.2d 372, [main volume] writ granted, writ withdrawn, cause dismissed 714 S.W.2d 313.

Although election tribunal may void election and order new election to be held without ever attempting to ascertain for whom illegal voters cast their ballots, overriding policy which guides election contest is to determine the true outcome of the election. Green v. Reyes (App. 14 Dist. 1992) 836 S.W.2d 203.

Complaints that city council failed to wait six months between time council approved resolution regarding placement of zoning proposal on ballot and referendum, that proposed ordinance was not published in newspaper six months before referendum as required by city charter, and that city prevented voters who moved into town since date of publication from casting informed ballots by its reliance on publication of proposed ordinance one year and six months prior to referendum, did not pertain to authority to hold election, but instead pertained to city's failure to conduct fair election or take all necessary preliminary steps before holding referendum, and thus were proper subject for election challenge. Rossano v. Townsend (App. 14 Dist. 1999) 9 S.W.3d 357.

2. Illegal votes—In general

Miller v. Hill (App. 14 Dist. 1985) 698 S.W.2d 372, writ granted, writ [main volume] withdrawn, cause dismissed 714 S.W.2d 313.

Absentee ballots for school board election that were rejected for signature discrepancies, but that were compared to wrong signatures, were properly validated in election contest. Tiller v. Martinez (App. 4 Dist. 1998) 974 S.W.2d 769, rehearing overruled, review dismissed w.o.j., rehearing of petition for review denied.

In school board election contest, absentee ballot that was improperly rejected for tampering should, nevertheless, not have been validated, where comparison of signatures on the carrier envelope and the ballot application led to the inescapable conclusion that the same person did not sign both times. Tiller v. Martinez (App. 4 Dist. 1998) 974 S.W.2d 769, rehearing overruled, review dismissed w.o.j., rehearing of petition for review denied.

School board candidate failed to establish that absentee ballots should have been invalidated because they were mailed to a post office box instead of the voter's residence, where candidate failed to show that contested ballots were cast in his race. Tiller v. Martinez (App. 4 Dist. 1998) 974 S.W.2d 769, rehearing overruled, review dismissed w.o.j., rehearing of petition for review denied.

School board candidate failed to establish that absentee ballots should have been invalidated because of alleged signature or witnessing or assistance problems, where he made no showing that ballots were actually cast in his election and presented no argument as to why they were invalid. Tiller v. Martinez (App. 4 Dist. 1998) 974 S.W.2d 769, rehearing overruled, review dismissed w.o.j., rehearing of petition for review denied.

5. — Irregularities, illegal votes

Election contestants must allege and prove particularized material irregularities in conduct of election and show either that different and correct result should have been reached by counting or not counting certain specified votes affected by irregularities, or that irregularities rendered impossible a determination of majority of voters' true will. Guerra v. Garza (App. 13 Dist. 1993) 865 S.W.2d 573, rehearing overruled, writ dismissed w.o.j.

6. Election law validity

While allegations of wrongdoing and fraud in the process of the election were proper subjects of an election contest, the allegation by police and firefighters that city had no statutory authority to hold the election to repeal their collective bargaining rights was not. City of Sherman v. Hudman (App. 5 Dist. 1999) 996 S.W.2d 904, review granted, vacated.

7. Pre-election matters

Under city charter provision requiring six-month delay between publication of proposed ordinance and adoption thereof, and stating that six-month waiting period was for public hearing and debate, city was required to publish proposed ordinance, wait six months, and then hold referendum on ordinance; six month waiting period did not apply only to enactment of ordinance following referendum, since any hearing and debate after referendum but before enactment would be pointless. Rossano v. Townsend (App. 14 Dist. 1999) 9 S.W.3d 357.

7.5. Polling places

Primary administrator's joining of the nineteen election precinct polling places in violation of statute requiring that each precinct be served by single polling place located within boundaries of precinct, a directory provision, was not grounds for setting aside election results, where violations did not result in illegal votes being counted, there was no evidence that any eligible voters were prevented from voting or that election officials failed to count legal votes, and there were no allegations that election officials engaged in illegal conduct. Honts v. Shaw (App. 3 Dist. 1998) 975 S.W.2d 816.

8. Election day matters

For purpose of determining whether mandamus would lie in challenge to failure of election officer to order runoff election where required by law, remedy of election contest was not available to relator and was therefore inadequate; while statute

controlling scope of inquiry of election contest addresses "illegal conduct" and/or "mistake[s]" of election officials, in election contest only such matters happening on day of election are valid bases for complaint. *Estrada v. Adame* (App. 13 Dist. 1997) 951 S.W.2d 165, rehearing overruled.

10. Election officers—In general

When ballots are rejected by election judge on the basis of signature discrepancies, and such rejection is contested at trial, the trial court may, in its discretion, uphold oral testimony from the voter or other witnesses regarding the similarity of the signatures and may compare the signatures to refute the election judge's decision, but when the signatures clearly appear to be different, the trial court need not accept the testimony of the voter or other witnesses, and may rely on its own comparison without the aid of expert testimony. *Tiller v. Martinez* (App. 4 Dist. 1998) 974 S.W.2d 769, rehearing overruled, review dismissed w.o.j., rehearing of petition for review denied.

Validation of absentee ballots based on testimony from voters, whose ballots were rejected due to signature discrepancies, that signatures were theirs, and based upon physical comparison of signatures, was not abuse of discretion in school board election contest. *Tiller v. Martinez* (App. 4 Dist. 1998) 974 S.W.2d 769, rehearing overruled, review dismissed w.o.j., rehearing of petition for review denied.

13. — Illegal conduct or mistake, election officers

Violations of directory provisions stemming from the conduct of election officials do not result in illegal votes. *Honts v. Shaw* (App. 3 Dist. 1998) 975 S.W.2d 816.

Trial court's findings that lack of publication of proposed zoning ordinance and lack of public hearings were per se violations of city's charter were in nature of findings that city officials engaged in fraud, or illegal conduct, or made mistake, for the purpose of determining whether referendum relating to proposed ordinance should be invalidated under Election Code, which includes fraud, illegal conduct, or mistake as grounds for election contest review. *Rossano v. Townsend* (App. 14 Dist. 1999) 9 S.W.3d 357.

14. Pleadings—In general

Police and firefighters did not prematurely file election contest, which challenged results of election to repeal their collective bargaining rights, by amending after the election their pre-election pleadings, which challenged city's authority to hold the election, where pre-election pleadings did not assert grounds constituting an election contest. *City of Sherman v. Hudman* (App. 5 Dist. 1999) 996 S.W.2d 904, review granted, vacated.

15. — Amendment of pleadings

Timely election contest petition for school board that correctly named candidates and office, stated the grounds for contest, and pleaded underlying facts, but that incorrectly referred to "place 2"

race rather than "place 3" race, was nevertheless sufficient to invoke the jurisdiction of the district court, and could be amended to correct error outside 30-day period for bringing election contest. *Tiller v. Martinez* (App. 4 Dist. 1998) 974 S.W.2d 769, rehearing overruled, review dismissed w.o.j., rehearing of petition for review denied.

16. Presumptions and burden of proof

Miller v. Hill (App. 14 Dist. 1985) 698 S.W.2d 372, [main volume] writ granted, writ withdrawn, cause dismissed 714 S.W.2d 313.

Regardless of whether election contestant should have shown how alleged irregularities directly affected particular votes, he had burden of showing that outcome of election was not true outcome because of such irregularities. *Chumney v. Craig* (App. 10 Dist. 1991) 805 S.W.2d 864, writ denied, rehearing of writ of error overruled.

Burden of proving illegality in an election contest is on contestant who must prove that illegal votes were cast in election being contested and that a different and correct result would have been reached by not counting the illegal votes. *Green v. Reyes* (App. 14 Dist. 1992) 836 S.W.2d 203.

Courts may not set aside election without proof that violation of Election Code affected the result; contestant must show that outcome, as shown by final canvass, was not true outcome either for illegal votes having been counted or for election official's having prevented eligible voters from voting, having failed to count legal votes, or having engaged in other fraud or illegal conduct or made mistake. *Alvarez v. Espinoza* (App. 4 Dist. 1992) 844 S.W.2d 238, rehearing denied, writ dismissed w.o.j., rehearing of writ of error overruled.

Election contestant has burden of showing by clear and convincing evidence that outcome, as shown by final canvass, is not true outcome either because illegal votes were counted or because election official prevented eligible voters from voting, failed to count legal votes, or engaged in other fraud or illegal conduct or made mistake. *Alvarez v. Espinoza* (App. 4 Dist. 1992) 844 S.W.2d 238, rehearing denied, writ dismissed w.o.j., rehearing of writ of error overruled.

Election contestant has burden of proving that voting irregularities were present and that they materially affected election's results. *Guerra v. Garza* (App. 13 Dist. 1993) 865 S.W.2d 573, rehearing overruled, writ dismissed w.o.j.

To overturn an election, the contestant has the burden of proving by clear and convincing evidence that voting irregularities materially affected the election results, which requires him to show that illegal votes were counted or an election official prevented eligible voters from voting, failed to count legal votes, or engaged in other fraud, illegal conduct, or mistake. *Tiller v. Martinez* (App. 4 Dist. 1998) 974 S.W.2d 769, rehearing overruled, review dismissed w.o.j., rehearing of petition for review denied.

School board election contestant was not required to introduce into evidence the actual ballots

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in order to meet his burden of demonstrating that outcome was not the true outcome either because illegal votes were counted, or because an election official prevented eligible voters from voting, failed to count legal votes, or engaged in other fraud or illegal conduct or made a mistake. *Tiller v. Martinez* (App. 4 Dist. 1998) 974 S.W.2d 769, rehearing overruled, review dismissed w.o.j., rehearing of petition for review denied.

To overcome the presumed correctness of the election judge's determinations, contestant must show that voter was legally qualified to vote, and ballot was properly cast; however, proof of legal qualification is unnecessary when ballot was rejected for a reason unrelated to the voter's qualifications. *Tiller v. Martinez* (App. 4 Dist. 1998) 974 S.W.2d 769, rehearing overruled, review dismissed w.o.j., rehearing of petition for review denied.

School board election contestant was not required to show that voters were qualified to vote by mail because of a disability to establish that their absentee ballots were improperly rejected, where ballots were rejected on the basis of signature discrepancies, not on the basis of the voters' legal qualification to vote. *Tiller v. Martinez* (App. 4 Dist. 1998) 974 S.W.2d 769, rehearing overruled, review dismissed w.o.j., rehearing of petition for review denied.

Election contestant bears the burden of proving that violations occurred and that they materially affected the outcome of the election. *Honts v. Shaw* (App. 3 Dist. 1998) 975 S.W.2d 816.

Zoning ordinance adopted following referendum was not identical to proposed ordinance published, and thus requirements of charter regarding enactment of ordinances were not met, despite fact that much of substance of published ordinance and enacted ordinance were identical, where names were different, voting dates were different, and ordinance adopted contained caption, verifying provision, repealer clause, and severability clause that published proposed ordinance did not. *Rossano v. Townsend* (App. 14 Dist. 1999) 9 S.W.3d 357.

18. Discretion of court

Trial court had discretion, in election contest, to disregard official canvass, in determining whether number of illegal votes exceeded margin of victory, and to base difference in election outcome on recount performed while inspecting the ballots. *Slusher v. Streater* (App. 1 Dist. 1995) 896 S.W.2d 239, rehearing overruled.

In an election contest, trial court is vested with wide discretion in determining all matters necessary or proper to determine contest's outcome, including whether ends of justice require the opening of the ballot boxes and a recount of the ballots. *Slusher v. Streater* (App. 1 Dist. 1995) 896 S.W.2d 239, rehearing overruled.

In election contest, trial court has wide discretion to decide all matters necessary or proper to

determine the contest's outcome, including whether the ends of justice require the reopening of ballot boxes and recounting the vote. *Tiller v. Martinez* (App. 4 Dist. 1998) 974 S.W.2d 769, rehearing overruled, review dismissed w.o.j., rehearing of petition for review denied.

If the evidence shows that mail-in absentee ballots were rejected for the sole reason that the election judge determined that there was a signature discrepancy, the trial court may review the signatures and hear testimony regarding the discretionary issue to determine whether the signatures on the mail-in ballot application and the carrier envelope were executed by the same person. *Tiller v. Martinez* (App. 4 Dist. 1998) 974 S.W.2d 769, rehearing overruled, review dismissed w.o.j., rehearing of petition for review denied.

In an election contest, a district court's authority to act is limited to the subjects or grounds expressly or impliedly authorized by the Election Code. *Rossano v. Townsend* (App. 14 Dist. 1999) 9 S.W.3d 357.

Complaints that city council failed to wait six months between time council approved resolution regarding placement of zoning proposal on ballot and referendum, that proposed ordinance was not published in newspaper six months before referendum as required by city charter, and that city prevented voters who moved into town since date of publication from casting informed ballots by its reliance on publication of proposed ordinance one year and six months prior to referendum, were in nature of complaints that city officials prevented eligible voters from voting or that city officials, by failing to publish, or republish, the ordinance, engaged in fraud or illegal conduct or made mistakes, all of which were grounds within the scope of an election contest review, and thus trial court had legislative authority to consider complaints. *Rossano v. Townsend* (App. 14 Dist. 1999) 9 S.W.3d 357.

District court had authority to consider validity of election process for referendum on zoning proposal, including issue of adequacy of notice, where election process was completed and city council had purportedly adopted zoning ordinance. *Rossano v. Townsend* (App. 14 Dist. 1999) 9 S.W.3d 357.

19. Review

Standard of review for an appeal from a judgment in an election contest is whether the record shows that the trial court abused its discretion. *Honts v. Shaw* (App. 3 Dist. 1998) 975 S.W.2d 816.

"Election contest" includes any type of suit in which the validity of an election or any part of the elective process is made the subject matter of the litigation, including the manner of giving notice. *Rossano v. Townsend* (App. 14 Dist. 1999) 9 S.W.3d 357.

§ 221.005. Date of Determination of Official Result of Election

Except as provided by Section 242.003, in this title the date the official result of an election is determined is the date the final canvassing authority for the election completes its canvass

for the office or measure involved in the contest. If a new canvass is conducted following a recount, the date of the official result is the date the authority completes its canvass on the basis of the recount.

Amended by Acts 1989, 71st Leg., ch. 2, § 7.13, eff. Aug. 28, 1989.

Historical and Statutory Notes

1989 Legislation

The 1989 amendment to conform to Acts 1987, 70th Leg., 2nd C.S., ch. 59 substituted "If a new

canvass is conducted following a recount" for "If a recount is taken" in the second sentence.

§ 221.008. Examination of Secured Ballots and Equipment

A tribunal hearing an election contest may cause secured ballot boxes, envelopes, voting machines, voting devices, or other equipment used in the election to be unsecured to determine the correct vote count or any other fact that the tribunal considers pertinent to a fair and just disposition of the contest.

Amended by Acts 1997, 75th Leg., ch. 1078, § 21, eff. Sept. 1, 1997.

Notes of Decisions

2. Grounds, generally

Trial court abused its discretion by refusing to open ballot boxes to determine outcome of election for County Attorney, as caller for two precincts testified that one or two people wrote in write-in candidate's name for County Attorney, while certified canvas showed that write-in candidate received more than 300 votes from those precincts. Guerra v. Garza (App. 13 Dist. 1993) 865 S.W.2d 573, rehearing overruled, writ dismissed w.o.j.

including whether ends of justice require opening of ballot boxes and recount of ballots; appellate court will not overturn trial court's decision unless clear abuse of discretion on material issue is shown. Guerra v. Garza (App. 13 Dist. 1993) 865 S.W.2d 573, rehearing overruled, writ dismissed w.o.j.

5. Discretion of court

Trial court, in election contest, is vested with wide discretion in determining all matters necessary or proper to determine contest's outcome,

In an election contest, trial court is vested with wide discretion in determining all matters necessary or proper to determine contest's outcome, including whether ends of justice require the opening of the ballot boxes and a recount of the ballots. Slusher v. Streater (App. 1 Dist. 1995) 896 S.W.2d 239, rehearing overruled.

§ 221.009. Compelling Voter to Reveal Vote

(a) A voter who cast an illegal vote may be compelled, after the illegality has been established to the satisfaction of the tribunal hearing the contest, to disclose the name of the candidate for whom the voter voted or how the voter voted on a measure if the issue is relevant to the election contest.

(b) If the number of illegal votes is equal to or greater than the number of votes necessary to change the outcome of an election, the tribunal may declare the election void without attempting to determine how individual voters voted.

Amended by Acts 1997, 75th Leg., ch. 864, § 228, eff. Sept. 1, 1997.

Law Review and Journal Commentaries

Consideration of illegal votes in legislative election contests. Robert A. Junell, Curtis L. Seidlits,

Jr., and Glen G. Shuffler, 28 Tex.Tech L.Rev. 1095 (1997).

Library References

Rule 506: Political vote, see Goode et al., 1 Texas Practice § 506.1 (2d ed.).

Notes of Decisions

Presumptions and burden of proof 3
Voiding election 2

1. Construction and application

Voters' constitutional right not to reveal for whom they had voted does not extend to voters who have cast illegal votes. *Green v. Reyes* (App. 14 Dist. 1992) 836 S.W.2d 203.

2. Voiding election

Election could be declared void as result of invalidation of late absentee ballot, on ground that application for ballot was not accompanied by certificate of licensed physician, chiropractor, or accredited Christian Science practitioner, without attempting to determine for whom vote was cast, where election involved one-vote margin; irregularity materially affected outcome. *Kelley v. Scott* (App. 8 Dist. 1987) 733 S.W.2d 312, dismissed.

In regard to contested election, court reasonably could have refused to believe testimony of convicted felon that he cast vote for challenger of election results, as felon's testimony suggested that he was biased against challenger because felon blamed challenger for damaging felon's reputation by

newspaper article about his having voted illegally; thus, court was authorized to declare election void, rather than subtracting vote from challenger and tipping race in favor of purported winner, which race otherwise would have been evenly divided when subtractions were made for other five illegal voters. *Medrano v. Gleinser* (App. 13 Dist. 1989) 769 S.W.2d 687.

Illegal votes provided no basis for overturning results of election, where number of illegal votes cast did not equal or exceed the margin of victory. *Slusher v. Streater* (App. 1 Dist. 1995) 896 S.W.2d 239, rehearing overruled.

3. Presumptions and burden of proof

Burden of proving illegality in an election contest is on contestant who must prove that illegal votes were cast in election being contested and that a different and correct result would have been reached by not counting the illegal votes. *Green v. Reyes* (App. 14 Dist. 1992) 836 S.W.2d 203.

Election contestant has burden of proving that voting irregularities were present and that they materially affected the election results. *Slusher v. Streater* (App. 1 Dist. 1995) 896 S.W.2d 239, rehearing overruled.

§ 221.011. Illegal Votes Subtracted

Law Review and Journal Commentaries

Consideration of illegal votes in legislative election contests. Robert A. Junell, Curtis L. Seidlits,

Jr., and Glen G. Shuffler, 28 *Tex.Tech L.Rev.* 1095 (1997).

Notes of Decisions

Construction and application 1
Findings 2

1. Construction and application

In the absence of evidence of extrinsic fraud in connection with absentee ballots, fact that great majority of absentee ballots on which there had been an erasure were cast for one candidate did not provide a basis for failing to count those ballots. *Reyes v. City of Laredo* (App. 4 Dist. 1990) 794 S.W.2d 846.

In the absence of any evidence to support contention that there were tens, if not hundreds, of ballots which were objectionable because of adhesive dots and markings which had been placed on them, those markings did not provide basis for changing results of the election where there would be no change in the result even if each of ballots with that defect which was actually presented to the court was counted or was not counted. *Reyes v. City of Laredo* (App. 4 Dist. 1990) 794 S.W.2d 846.

2. Findings

In regard to contested election in which court found that number of illegal votes was equal to or

greater than number of votes necessary to change outcome of election, court was not required to make additional requested findings as to who voted how, and why they were illegal voters. *Medrano v. Gleinser* (App. 13 Dist. 1989) 769 S.W.2d 687.

Finding, in election contest, that unascertained votes were indeed illegal was supported by evidence that accounting firm determined number of crossover voters by comparison of names, registration numbers, precinct numbers, and signatures of those who voted in both the Republican primary election and the Democratic run-off. *Green v. Reyes* (App. 14 Dist. 1992) 836 S.W.2d 203.

Finding, in election contest, that candidates for whom voters cast illegal ballots could not be ascertained was supported by evidence that some voters failed to appear, resisted service, could not be located, refused to disclose for whom they had voted, or disclosed for whom they had voted with qualifications such as "I think" or "I probably." *Green v. Reyes* (App. 14 Dist. 1992) 836 S.W.2d 203.

In election contest, finding that 97.5% of illegal voters in multi-race run-off election voted in contested race was supported by expert testimony of professor of political science that approximately

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97.5% of those voters that cast legal ballots voted in the contested race and that no reason existed to believe the illegal voters were not typically moti-

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vated to vote in each race. *Green v. Reyes* (App. 14 Dist. 1992) 836 S.W.2d 203.

§ 221.012. Tribunal's Action on Contest

Law Review and Journal Commentaries

Consideration of illegal votes in legislative election contests. Robert A. Junell, Curtis L. Seidlits,

Jr., and Glen G. Shuffler, 28 *Tex.Tech L.Rev.* 1095 (1997).

Notes of Decisions

Causation 2.5
Discretion of court 3.5
Parties 4.5

1. In general

Miller v. Hill (App. 14 Dist. 1985) 698 S.W.2d 372, writ granted, writ [main volume] withdrawn, cause dismissed 714 S.W.2d 313.

Although election tribunal may void election and order new election to be held without ever attempting to ascertain for whom illegal voters cast their ballots, overriding policy which guides election contest is to determine the true outcome of the election. *Green v. Reyes* (App. 14 Dist. 1992) 836 S.W.2d 203.

Trial court may resolve election contest by determining whether number of illegal votes exceeded winning candidate's margin, without attempting to determine which candidate received any specific illegal ballot. *Alvarez v. Espinoza* (App. 4 Dist. 1992) 844 S.W.2d 238, rehearing denied, writ dismissed w.o.j., rehearing of writ of error overruled.

2. Void elections

True outcome of primary election was uncertain, and trial court properly declared election canvass void and ordered new election, where margin of victory, after deducting the number of the attributable illegal votes from each candidate, was far surpassed by number of unascertained illegal votes. *Green v. Reyes* (App. 14 Dist. 1992) 836 S.W.2d 203.

Once trial judge in election contest found that he could not ascertain true outcome of election, he had no choice but to declare election void. *Thompson v. Willis* (App. 9 Dist. 1994) 881 S.W.2d 221.

2.5. Causation

Election officials must comply with code procedures, but it is not necessary to order new election for errors or violations that did not affect outcome; however, it is possible for official disregard of election laws to be so pervasive that election could not stand, even if contestant may not have able to prove that violations caused incorrect outcome. *Alvarez v. Espinoza* (App. 4 Dist. 1992) 844 S.W.2d 238, rehearing denied, writ dismissed w.o.j., rehearing of writ of error overruled.

3. Presumptions and burden of proof

As matter of policy, declared election results should be upheld unless there is clear and convincing evidence of erroneous result. *Chumney v. Craig* (App. 10 Dist. 1991) 805 S.W.2d 864, writ denied, rehearing of writ of error overruled.

There is presumption that election officials have done their duty in conducting election, and contestant has heavy burden of overcoming presumption that officials discharged their duty properly in receiving or rejecting ballot. *Chumney v. Craig* (App. 10 Dist. 1991) 805 S.W.2d 864, writ denied, rehearing of writ of error overruled.

Election Code provision which requires tribunal hearing election contest to declare election void if it cannot ascertain true outcome of the election does not authorize court to void any close election, but rather seeks to ensure that final election canvass is a clear reflection of the legal votes cast in election where illegal votes cast cannot, on reasonable inquiry, be attributed either to contestant or contestee. *Green v. Reyes* (App. 14 Dist. 1992) 836 S.W.2d 203.

3.5. Discretion of court

Election Code vests discretion in trial court to determine whether or not true results of election can be ascertained in election contest. *Green v. Reyes* (App. 14 Dist. 1992) 836 S.W.2d 203.

4.5. Parties

Voter had standing to contest election approving creation of county hospital district, despite contention that there was no proof that he was qualified voter based on fact that his name was spelled differently on petition than it was on his voter's registration card; voter was sufficiently identified. *Chumney v. Craig* (App. 10 Dist. 1991) 805 S.W.2d 864, writ denied, rehearing of writ of error overruled.

5. Review

Reviewing court would not address trial court's conclusions concerning its inability to grant declaratory relief in action challenging county hospital district election where contestant also sought relief under Election Code, same issues would have been presented whether action was brought under Election Code or Uniform Declaratory Judgments Act, contestant would have same burden of proof in declaratory judgment action as under Election Code, and Election Code afforded contestant all

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Note 2

rights and potential relief he could have received under Uniform Declaratory Judgments Act. *Chumney v. Craig* (App. 10 Dist. 1991) 805 S.W.2d 864, writ denied, rehearing of writ of error overruled.

Standard of review to be placed on an appeal from judgment in an election contest is whether from the record it appears that trial court abused its discretion. *Green v. Reyes* (App. 14 Dist. 1992) 836 S.W.2d 203.

Trial court's findings and conclusions of law in election contest were sufficiently specific to permit appellate review; findings resolved controlling issues and revealed basis for judgment, and unsuccessful candidate was able to identify factual and

legal bases for trial court's action and attack them on appeal. *Alvarez v. Espinoza* (App. 4 Dist. 1992) 844 S.W.2d 238, rehearing denied, writ dismissed w.o.j., rehearing of writ of error overruled.

The standard of review in an appeal from a judgment in an election contest is a determination whether the trial court abused its discretion. *Tiller v. Martinez* (App. 4 Dist. 1998) 974 S.W.2d 769, rehearing overruled, review dismissed w.o.j., rehearing of petition for review denied.

Standard of review for an appeal from a judgment in an election contest is whether the record shows that the trial court abused its discretion. *Honts v. Shaw* (App. 3 Dist. 1998) 975 S.W.2d 816.

§ 221.015. Right to Occupy Office Involved in Contest

(a) If the official result of a contested election shows that the contestee won, on qualifying as provided by law the contestee is entitled to occupy the office after the beginning of the term for which the election was held, pending the determination of the contest.

If the final judgment does not change the official result, the contestee is entitled to continue in office without again qualifying for the office.

(b) If a final judgment declaring the contestant elected is rendered after the beginning of the term for which the contested election was held, on qualifying as provided by law the contestant shall assume office as soon as practicable after the judgment becomes final.

(c) A contestee occupying the office is entitled to the emoluments of the office that accrue during the period of occupancy. A contestant who gains the office is not entitled to emoluments for any period before the contestant assumes office.

(d) If the final judgment declares the election void, the vacancy is created as of the later of the date of the judgment or the first day of the term for which the contested election was held. A person who occupies the office pending the outcome of the new election, either as a constitutional holdover from the prior term or through other law, is entitled to receive the emoluments of office until the successor qualifies for the office after the new election.

(e) The person elected at the new election must qualify for the office as if no contest had occurred.

Amended by Acts 1993, 73rd Leg., ch. 759, § 5, eff. Sept. 1, 1993.

Historical and Statutory Notes

1993 Legislation

The 1993 amendment rewrote the section.

Notes of Decisions

In general 1 Emoluments 2

1. In general

After district court had ordered new election for office of Justice of the Peace and procedure applicable thereto, contestee, who was shown by official result of contested election to have won election and who qualified for office, was entitled to occupy office pending official result of new election. *Stevens v. Cain* (App. 7 Dist. 1987) 735 S.W.2d 694.

2. Emoluments

Texas elected official, who, pursuant to preliminary injunction in election contest under state and

federal law, was enjoined from holding office, was entitled to salary he would have received, once he prevailed in underlying action and injunction was lifted. *Casarez v. Val Verde County, W.D.Tex.* 1998, 27 F.Supp.2d 749.

After prevailing in election contest, elected official was not entitled to salary he had been denied by preliminary injunction, since, early in course of discovery, official sought to withdraw as nominee for county commissioner, and following his success in state court litigation, he declined office. *Casarez v. Val Verde County, W.D.Tex.* 1998, 27 F.Supp.2d 749.

SUBTITLE B. CONTESTS IN DISTRICT COURT

CHAPTER 231. CONTEST IN DISTRICT COURT GENERALLY

Section	Section
231.004. Disqualification of District Judge.	231.008. Delivery of Certified Copies of Judgment.
231.007. Procedures for New Election Generally.	

Library References

Election challenges, contests, see Brooks, 35
Texas Practice § 11.23.

§ 231.004. Disqualification of District Judge

(a) The judge of a judicial district that includes any territory covered by a contested election that is less than statewide is disqualified to preside in the contest.

(b) If a contest is filed in which a judge is disqualified under Subsection (a), the district clerk shall promptly call the filing to the attention of the judge. The judge shall promptly request the presiding judge of the administrative judicial region to assign a special judge to preside in the contest.

(c) A judge who resides in the territory covered by a contested election is not eligible for assignment as a special judge for the contest.

(d) Subsections (a), (b), and (c) do not apply to a contest of an election for an office of a political party.

(e) In an election contest in which the district judge is disqualified, until a special judge is assigned to preside over the contest, the presiding judge of the administrative judicial region may take any action regarding the contest that a district judge may take if the contested election is:

(1) a primary election; or

(2) an election in which a runoff in the contested race is necessary, according to the official returns, or will be necessary if the contestant prevails.

Amended by Acts 1989, 71st Leg., ch. 2, § 7.14, eff. Aug. 28, 1989.

Historical and Statutory Notes

1989 Legislation

The 1989 amendment to conform to Acts 1987, 70th Leg., ch. 148, § 2.93 in subsec. (b) and subsec.

(e) substituted "administrative judicial region" for "administrative judicial district".

§ 231.007. Procedures for New Election Generally

(a) If a judgment in an election contest orders that a new election be held, as soon as practicable after the judgment becomes final, the district court shall set the date for the new election. In the case of a general or special election, the court shall direct the appropriate authority to order the election for the date set by the court. In the case of a primary election, the court shall direct the appropriate officers of the political party to hold the election on the date set.

(b) Except as otherwise provided by this subtitle, the new election shall be held in the same manner as the contested election.

(c) The district court may set the election for a date that shortens the regular period for early voting, but the date must make it possible for early voting by personal appearance to begin not later than the 10th day before election day. In the order setting the date for the election, the court shall also set the date for beginning early voting by personal appearance if it is not possible to begin on the regular day.

(d) In addition to public notice required by law, the district court may require the new election to be publicized in the manner prescribed by the court.

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§ 231.008

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(e) If a function in the conduct of a new election for an office would normally be performed by an officer who is a party to the contest, the district court may designate another person to perform the function and may fix a reasonable compensation for the service, to be paid as other expenses of the election.

(f) The district court may shorten the normal period between election day and the date of the official canvass.

(g) The district court retains jurisdiction of the contest until the new election is completed and may make any orders the court considers necessary to ensure its proper conduct.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.70; Acts 1991, 72nd Leg., ch. 554, § 41, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

Acts 1991, 72nd Leg., ch. 203, and Acts 1991, 72nd Leg., ch. 554, in subsec. (c), substituted "early voting" for "absentee voting" in three places.

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 141.034.

§ 231.008. Delivery of Certified Copies of Judgment

(a) As soon as practicable after a judgment in an election contest becomes final or, if the judgment orders that a new election be held, after the district court sets the date for the new election, the district clerk shall deliver certified copies of the judgment as provided by this section. If the judgment orders a new election, the clerk shall attach to each copy of the judgment a certified copy of the order setting the election date and any other order relating to the conduct of the election.

(b) If the judgment in a contest for an office affects the preparation of the ballot for a succeeding election, the clerk shall deliver a copy to the authority responsible for having the official ballot prepared or, in the case of a statewide or district office, to the authority responsible for certifying the names of the candidates for placement on the ballot.

(c) If the judgment orders that a new general or special election be held, the clerk shall deliver a copy to the authority responsible for ordering the election. If the judgment orders a new primary election, the clerk shall deliver a copy to the state chair of the appropriate political party, in the case of a statewide or district office, or to the county chair, in the case of a county or precinct office.

(d) The clerk shall deliver a copy of the judgment to the custodian of the election register for the final canvassing authority in the contested election. The custodian shall record in the register the judgment or an abstract of the judgment in sufficient detail to show the outcome of the contest.

(e) The district judge may direct the clerk to furnish certified copies of the judgment to other persons as necessary to effectuate the judgment.

Amended by Acts 1997, 75th Leg., ch. 864, § 229, eff. Sept. 1, 1997.

CHAPTER 232. CONTESTS FOR OFFICE

SUBCHAPTER A. TRIAL AND DISPOSITION OF CONTEST

Section	232.013.	Rescheduling	Runoff	for	Contested
		Race.			

Section	232.008.	Filing Period for Petition.
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WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

SUBCHAPTER A. TRIAL AND DISPOSITION OF CONTEST

Library References

Election challenges, contests, see Brooks, 35
Texas Practice § 11.23.

§ 232.002. Contestant

Notes of Decisions

5. Evidence

Candidate who challenged election did not meet burden of showing by clear and convincing evidence that errors in some ballots and allegedly locked polling place doors materially affected out-

come of election, as margin of victory was 75 votes, and candidate only proved that two voters were prevented from voting by irregularities. *Olsen v. Cooper* (App. 1 Dist. 2000) 24 S.W.3d 608, rehearing overruled.

§ 232.003. Contestee: General Rule

Notes of Decisions

Notice 4
Parties 5

4. Notice

Individual who holds certificate of election, rather than a member of school board who has participated in certifying election results, is proper contestee in school board trustee contest, and thus notice of contest did not have to be given to a school board member; declining to follow *Zavalletta v. Parker*, 611 S.W.2d 466. *Jordan v. Norman* (App. 9 Dist. 1986) 711 S.W.2d 358.

5. Parties

Candidates with the least number of votes, who could not be among the top two candidates even if all votes affected by the recount were cast for them, were not necessary parties for adjudication of primary election contest, but highest ranking candidate was required to be joined as a contestee in contest between the second and third ranking candidates for the second of two positions in runoff election. *Reyes v. Zuniga* (App. 4 Dist. 1990) 794 S.W.2d 842.

§ 232.008. Filing Period for Petition

(a) A contestant may not file the petition in an election contest earlier than the day after election day.

(b) Except as provided by Subsection (c), a contestant must file the petition not later than the 30th day after the date the official result of the contested election is determined.

(c) A contestant must file the petition not later than the 10th day after the date the official result is determined in a contest of:

(1) a primary election; or

(2) a general or special election for which a runoff is necessary according to the official result or will be necessary if the contestant prevails.

(d) A contestant must deliver a copy of the petition to the secretary of state by the same deadline prescribed for the filing of the petition.

Amended by Acts 1997, 75th Leg., ch. 1349, § 69, eff. Sept. 1, 1997.

Notes of Decisions

Injunction 6.5

Notice 2-3

Secretary of State 2.5
Secretary of State, notice 2.5

trial court of subject-matter jurisdiction over election contest; purpose of statute was to provide notice to Secretary for informational purposes only. *Honts v. Shaw* (App. 3 Dist. 1998) 975 S.W.2d 816.

4. Timeliness—In general

The filing of an election contest must be within 30 days and the 30-day limit is jurisdictional and nonwaivable. *Jordan v. Norman* (App. 9 Dist. 1986) 711 S.W.2d 358.

2.5. — Secretary of State, notice

Election contestants' failure to timely notify the Secretary of State that they had filed election contest, as required by statute, did not deprive the

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Requirement that contestant file the petition in an election contest no later than the 30th day after the date the official result of the contested election is determined is jurisdictional and is nonwaivable. *Tiller v. Martinez* (App. 4 Dist. 1998) 974 S.W.2d 769, rehearing overruled, review dismissed w.o.j., rehearing of petition for review denied.

6. — Amendments of pleadings, timeliness

Timely election contest petition for school board that correctly named candidates and office, stated the grounds for contest, and pleaded underlying facts, but that incorrectly referred to "place 2" race rather than "place 3" race, was nevertheless sufficient to invoke the jurisdiction of the district court, and could be amended to correct error out-

side 30-day period for bringing election contest. *Tiller v. Martinez* (App. 4 Dist. 1998) 974 S.W.2d 769, rehearing overruled, review dismissed w.o.j., rehearing of petition for review denied.

6.5. Injunction

Injunction would not issue against election contestant challenging individual voter registrations on basis that certain individuals' did not have bona fide intent to obtain Texas residency; although court had issued injunction previously to prevent late hour, pre-election, en masse challenge to remove same voters, election contest was based upon allegation of violations of state election law, rather than as continuing violation of Voting Rights Act. *Curtis v. Smith*, E.D.Tex.2001, 145 F.Supp.2d 814.

§ 232.012. Accelerated Procedures for Trial of Certain Contests

Notes of Decisions

Trial date 5

5. Trial date

Failure to set election contest for trial within time frame specified by statute did not deprive

trial court of subject matter jurisdiction over election contest; dismissal of action for failure to set trial within time frame would not serve statute's purpose of compelling trial court to hear case promptly. *Honts v. Shaw* (App. 3 Dist. 1998) 975 S.W.2d 816.

§ 232.013. Rescheduling Runoff for Contested Race

(a) If the final judgment in an election contest necessitates a runoff election in the contested race, the district judge shall set the date for the runoff if the judge determines that lack of time prevents the proper conduct of the runoff on the regularly scheduled date. The runoff must be held on the same day of the week as the regularly scheduled runoff.

(b) The date set for the runoff may not provide a longer interval between the court order and the runoff than is required or authorized by law between the main election and a regularly scheduled runoff. The date may provide a shorter interval, but the interval must make it possible for early voting by personal appearance to begin not later than the 10th day before election day.

(c) If the runoff is set for a date that shortens the regular period for early voting, the order setting the date of the election must specify the date for beginning early voting by personal appearance.

(d) If the contested election is a primary, the district clerk shall deliver a certified copy of the order setting the date of the runoff to the state chair of the political party in the case of a statewide or district office or to the county chair in the case of a county or precinct office. Amended by Acts 1991, 72nd Leg., ch. 203, § 2.71; Acts 1991, 72nd Leg., ch. 554, § 42, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 864, § 230, eff. Sept. 1, 1997.

Historical and Statutory Notes

1991 Legislation

The 1991 amendment, in subsections (b) and (c), substituted "early voting" for "absentee voting".

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 141.034.

§ 232.014. Accelerated Appeal in Primary Contest

Law Review and Journal Commentaries

Accelerated civil appeals in Texas. M. Keith Dollahite, 56 Tex.B.J. 752 (1993).

Preserving error on appeal: A practical guide for civil appeals in Texas. John Hill Cayce, Jr., 23 St.Mary's L.J. 15 (1991).

§ 232.015

§ 232.015. Acceleration of Appeal by Court in Contest of General or Special Election

Law Review and Journal Commentaries

Preserving error on appeal: A practical guide for civil appeals in Texas. John Hill Cayce, Jr., 23 St.Mary's L.J. 15 (1991).

§ 232.016. Appeal Suspends Execution of Judgment

Law Review and Journal Commentaries

Preserving error on appeal: A practical guide for civil appeals in Texas. John Hill Cayce, Jr., 23 St.Mary's L.J. 15 (1991).

CHAPTER 233. CONTEST ON MEASURE

Section
233.006. Filing Period for Petition.

Section
233.014. Special Procedures for Contest of Constitutional Amendment Election.

Library References

Election challenges, contests, see Brooks, 35 Texas Practice § 11.23.

§ 233.002. Contestant

Notes of Decisions

2. In general
Election contest is a special proceeding created by the Legislature to provide a remedy for elections tainted by fraud, illegality or other irregularity.

ty. Blum v. Lanier (Sup. 1999) 997 S.W.2d 259, opinion after remand 9 S.W.3d 840, review dismissed w.o.j., rehearing of petition for review denied.

§ 233.006. Filing Period for Petition

(a) The contestant may not file the petition in the contest earlier than the day after election day.

(b) Except as provided by Section 233.014, the contestant must file the petition not later than the 30th day after the date the official result of the contested election is determined.

(c) The contestant must deliver a copy of the petition to the secretary of state by the same deadline prescribed for the filing of the petition.

Amended by Acts 1997, 75th Leg., ch. 1349, § 70, eff. Sept. 1, 1997.

Notes of Decisions

1. Construction and application
Walker v. Thetford (Civ.App. 1967) 418 S.W.2d 276, [main volume] ref. n.r.e..
State ex rel. Kimmons v. City of Azle (Civ.App. 1979) 588 S.W.2d 666, [main volume] ref. n.r.e..

8. Other proceedings
State ex rel. City of Weatherford v. Town of Hudson Oaks (Civ.App. 1980) 610 S.W.2d 550, [main volume] ref. n.r.e..

§ 233.014. Special Procedures for Contest of Constitutional Amendment Election

(a) This section applies only to a contest of an election on a proposed constitutional amendment.

(b) The contestant's petition must be filed and service of citation on the secretary of state must be obtained before the final official canvass is completed.

(c) The declaration of the official result of a contested election may not be made until the contest is finally determined. The secretary of state shall tabulate the county returns and the governor shall announce the final vote count, as ascertained from the returns, in a written document. The document announcing the final vote count must state that a contest of the election has been filed and that the declaration of the official result will not be made until the contest is finally determined.

(d) The trial date may not be earlier than the 45th day after the date of the contested election unless the contestant requests an earlier date.

(e) If an amended petition alleging additional grounds of contest is filed, the contest may not be called for trial earlier than the 20th day after the date the amended petition is filed unless the secretary of state agrees to calling the contest for trial at an earlier date.

(f) The court shall include in its judgment in a contest an order directing the governor to declare the official result of the election or to declare the election void, as appropriate, not later than the 10th day after the date the judgment becomes final.

(g) Any question relating to the validity or outcome of a constitutional amendment election may be raised in an election contest. A contest is the exclusive method for adjudicating such questions.

Amended by Acts 1989, 71st Leg., ch. 163, § 9, eff. Sept. 1, 1989.

Historical and Statutory Notes

1989 Legislation

The 1989 amendment in subsecs. (c) and (f) substituted "governor" for "state board of canvassers".

Notes of Decisions

Parties 1

construction of criminal punishment facilities; statutory provision permitting question relating to validity or outcome of constitutional amendment election to be raised in election contest did not necessarily imply that any voter had standing to raise question. *Hardy v. Hannah* (App. 3 Dist. 1992) 849 S.W.2d 355, rehearing overruled, writ denied, rehearing of writ of error overruled.

1. Parties

Individual voter had no justiciable interest and did not have standing to contest validity of constitutional amendment approved by voters to authorize issuance of general obligation bonds to fund

SUBTITLE C. CONTESTS IN OTHER TRIBUNALS

CHAPTER 241. CONTEST FOR STATE SENATOR OR REPRESENTATIVE

Section		Section	
241.003.	Petition.	241.009.	Master of Discovery.
241.004.	Answer.	241.0091.	Frivolous Petition.
241.006.	Delivery of Contest Papers to Presiding Officer.	241.011.	Referral of Contest to Committee; Hearing by Committee.
241.0061.	Security for Costs.	241.015.	Committee Report.
241.008.	Presiding Officer as Party.	241.017.	Withdrawal of Contest.

§ 241.003. Petition

(a) The contestant must state the grounds for the contest in a petition in the same manner as a petition in an election contest in the district court.

(b) The contestant must file the petition with the secretary of state not later than the seventh day after the date the official result of the contested election is determined. The contestant must deliver a copy of the petition to the contestee by the same deadline.

(c) The contestant may not file the petition with the secretary of state or deliver the copy to the contestee before the day after the date of the contested election.

(d) Section 1.006 does not apply to this section.
Amended by Acts 1993, 73rd Leg., ch. 759, § 6, eff. Sept. 1, 1993.

Historical and Statutory Notes

1993 Legislation

The 1993 amendment in subsec. (b) substituted "seventh" for "10th" and added subsec. (d).

Law Review and Journal Commentaries

Consideration of illegal votes in legislative elec- Jr., and Glen G. Shuffler, 28 Tex.Tech L.Rev. 1095
tion contests. Robert A. Junell, Curtis L. Seidlits, (1997).

§ 241.004. Answer

(a) The contestee must reply to the contestant's petition in an answer in the same manner as an answer to a petition in an election contest in the district court.

(b) The contestee must file the answer with the secretary of state not later than the seventh day after the date the contestee receives the copy of the petition. The contestee must deliver a copy of the answer to the contestant by the same deadline.

(c) Section 1.006 does not apply to this section.
Amended by Acts 1993, 73rd Leg., ch. 759, § 7, eff. Sept. 1, 1993.

Historical and Statutory Notes

1993 Legislation

The 1993 amendment in subsec. (b) substituted "seventh" for "10th" and added subsec. (c).

§ 241.006. Delivery of Contest Papers to Presiding Officer

(a) On receipt of a petition or answer, the secretary of state shall enter the date of filing on the document. If the document is filed by mail, the secretary shall attach to the document the envelope in which it was mailed.

(b) The secretary of state shall deliver a petition to the president of the senate or the speaker of the house of representatives, as appropriate, as soon as possible but not later than the day after the date the petition is received. The secretary shall deliver an answer to the appropriate presiding officer as soon as possible but not later than the day after the date of its receipt.

(c) The secretary of state shall deliver with the petition the secretary's certified statement of the total votes cast for each candidate for the office as shown by the final canvass. If the final canvass has not been completed, the statement shall be delivered as soon as practicable thereafter.

Amended by Acts 1993, 73rd Leg., ch. 759, § 8, eff. Sept. 1, 1993.

Historical and Statutory Notes

1993 Legislation

The 1993 amendment, in subsec. (b), twice inserted "as soon as possible but".

§ 241.0061. Security for Costs

(a) Not later than the third day after the date the contestee's answer is received by the presiding officer of the house having jurisdiction, the contestant must file with the secretary of the senate or chief clerk of the house of representatives, as appropriate:

- (1) a cost bond payable to the appropriate house and to the contestee in the amount of \$5,000, having sufficient sureties approved by the presiding officer, and conditioned that the contestant will pay all costs of the contest assessed against the contestant;

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- (2) a cash deposit in lieu of bond; or
- (3) an affidavit of inability to pay costs.

(b) Security for costs must be filed under Subsection (a), and an affidavit of inability to pay costs may be contested, in the manner generally applicable to a civil suit in the district court, subject to any changes imposed by the master or by rules of the house having jurisdiction. Added by Acts 1993, 73rd Leg., ch. 759, § 9, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 864, § 231, eff. Sept. 1, 1997.

§ 241.008. Presiding Officer as Party

If the presiding officer of the house having jurisdiction is a party to a contest, the house shall elect one of its members to perform the duties of the presiding officer with respect to the contest. The chair of the house's committee on administration shall perform those duties until the substitute is elected.

Amended by Acts 1997, 75th Leg., ch. 864, § 232, eff. Sept. 1, 1997.

§ 241.009. Master of Discovery

(a) As soon as practicable after receiving the contestee's answer, the presiding officer of the house having jurisdiction shall appoint a master of discovery to supervise discovery proceedings and the taking of depositions, to issue any necessary process, to receive and report evidence, and to perform any other duties assigned by the presiding officer or by the committee to which the contest is referred.

(b) The master must be a member of the house in which the contest is pending.

(c) The presiding officer or the committee may limit the master's authority in the same manner as a civil court in appointing a master in chancery.

(d) The master acts under the direction of the presiding officer before the case is referred to a committee and acts under the direction of the committee after the referral.

(e) The master's rulings are subject to review by the committee to which the contest is referred unless otherwise provided by rules of the house.

Amended by Acts 1993, 73rd Leg., ch. 759, § 9, eff. Sept. 1, 1993.

Historical and Statutory Notes

1993 Legislation

The 1993 amendment in subsec. (a) substituted "As soon as practicable" for "At any time", substituted "shall appoint" for "may appoint", and insert-

ed "to issue any necessary process"; and deleted subsec. (b) and designated former subssecs. (c) to (f) as subssecs. (b) to (e).

§ 241.0091. Frivolous Petition

(a) The master may on the master's own motion, or shall on the motion of the committee, determine whether the contestant's petition is frivolous or otherwise does not state the grounds necessary to maintain the contest.

(b) After making a determination under Subsection (a), the master shall promptly deliver to the committee a report stating the findings. The report to the committee may include any recommendation the master considers appropriate.

Added by Acts 1993, 73rd Leg., ch. 759, § 9, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 864, § 233, eff. Sept. 1, 1997.

§ 241.011. Referral of Contest to Committee; Hearing by Committee

(a) As soon as practicable after receiving the contestee's answer, the presiding officer of the house in which the contest is pending shall refer the contest to a special committee, a standing committee, or a committee of the whole, as provided by rules of the house.

(b) The committee shall promptly set a time and place for hearing the contest. After notice to the parties, the committee shall investigate the issues raised by the contest, hearing all legal evidence presented by the parties, except as provided by Subsection (c).

(c) The committee may refuse to hear testimony or other evidence presented in person by the parties if the master determines under Section 241.0091 that the contestant's petition is frivolous or otherwise groundless.

Amended by Acts 1993, 73rd Leg., ch. 759, § 9, eff. Sept. 1, 1993.

Historical and Statutory Notes

1993 Legislation

The 1993 amendment in subsec. (b) added “, except as provided by Subsection (c)”, and added subsec. (c).

§ 241.015. Committee Report

(a) Except as provided by Section 241.019, as soon as practicable after completing its hearing on a contest, the committee shall make a written report of its findings of fact and conclusions of law with respect to the contest to the house in which the contest is pending. The report may include any recommendation the committee considers appropriate.

(b) The committee shall accompany its report with all the papers in the contest and the evidence presented to the committee.

(c) The committee chair shall file the report with the secretary of the senate or the chief clerk of the house of representatives, as appropriate.

Amended by Acts 1997, 75th Leg., ch. 864, § 234, eff. Sept. 1, 1997.

§ 241.017. Withdrawal of Contest

(a) A contestant may withdraw the election contest at any time before the filing of the committee report by filing with the committee chair and the presiding officer of the house a written statement of withdrawal signed by the contestant or the contestant’s attorney.

(b) On withdrawal of the contest, the contest is dismissed and the presiding officer shall have the statement of withdrawal read into the journal of the appropriate house.

(c) Costs of the contest following a withdrawal may be assessed as provided by Section 241.025.

Amended by Acts 1997, 75th Leg., ch. 864, § 235, eff. Sept. 1, 1997.

CHAPTER 242. CONTEST FOR CONSTITUTIONAL EXECUTIVE OFFICE

<p>Section 242.001. Applicability of Chapter. 242.002. Conduct of Contest Generally.</p>	<p>Section 242.003. Contest for Office of Governor or Lieutenant Governor.</p>
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§ 242.001. Applicability of Chapter

This chapter applies to a contest of a general election for the office of governor, lieutenant governor, comptroller of public accounts, land commissioner, or attorney general.

Amended by Acts 1997, 75th Leg., ch. 1423, § 6.05, eff. Sept. 1, 1997.

§ 242.002. Conduct of Contest Generally

(a) Except as otherwise provided by this chapter, the applicable provisions of Chapter 241 govern an election contest under this chapter.

(b) Two copies of the petition and answer must be filed with the secretary of state. The secretary shall deliver one copy of each document to the presiding officer of each house of the legislature. Security for costs must be filed with the chief clerk of the house of representatives. Any cost bond must be payable to both houses.

(c) The presiding officers of the two houses of the legislature shall act jointly in appointing a master of discovery and in setting the amount of and approving the sureties on a cost bond. The master may be a member of either house.

(d) The presiding officers shall refer the contest to a committee constituted in accordance with joint rules of the two legislative houses. Unless otherwise provided by joint rule, the referral is not effective until both presiding officers make the referral.

(e) The committee shall make its report to both houses of the legislature, and the two houses shall consider the report and dispose of the contest in joint session.

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(f) Any legislative rules applicable to a contest under this chapter must be joint rules.
Amended by Acts 1993, 73rd Leg., ch. 759, § 10, eff. Sept. 1, 1993.

Historical and Statutory Notes

1993 Legislation
The 1993 amendment in subsec. (b) added the third and fourth sentences, and in subsec. (c) inserted "and in setting the amount of and approving the sureties on a cost bond".

§ 242.003. Contest for Office of Governor or Lieutenant Governor

- (a) This section applies only to a contest for the office of governor or lieutenant governor.
- (b) For purposes of a contest under this section, the date the official result of the contested election is determined is the date the governor completes the state canvass. The official result is determined from the tabulation of the election returns prepared by the secretary of state, except as provided by Subsection (d).
- (c) The secretary of state shall deliver a certified copy of the tabulation to each of the presiding officers.
- (d) The committee to which the contest is referred may treat the tabulation as correct until the speaker of the house of representatives opens and publishes the official election returns. If a discrepancy exists between the tabulation and the speaker's official count that might be material to a determination of the contest, the committee shall investigate the discrepancy to ascertain, if possible, the correct vote count.

Amended by Acts 1989, 71st Leg., ch. 163, § 10, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 759, § 11, eff. Sept. 1, 1993.

Historical and Statutory Notes

1989 Legislation
The 1989 amendment in subsec. (b) substituted "secretary of state" for "state board of canvassers" and in subssecs. (c) and (d) deleted "board's" preceding "tabulation".

"(b) Except as provided by Subsection (d), for purposes of conducting the contest, the official result of the contested election is determined from the tabulation of the election returns prepared by the secretary of state.

1993 Legislation
The 1993 amendment rewrote subssecs. (b) and (c) and deleted subsec. (e). Prior to amendment, subssecs. (b) and (c) read:

"(c) The secretary of state shall deliver a certified copy of the tabulation to each of the presiding officers instead of a certified statement of the votes cast as shown by the official canvass."

CHAPTER 243. CONTEST FOR PRESIDENTIAL ELECTORS

Section	Section
243.006. Hearing of Contest.	243.010. Evidence.
243.007. Master of Discovery.	243.011. Attendance of Witnesses.
243.008. Discovery and Depositions.	243.012. Disposition of Contest.
243.009. Hearing Procedure.	243.013. Costs of Contest.

§ 243.006. Hearing of Contest

When the contestee's answer is filed, the governor shall set a time and place for hearing the contest. After notice to the parties, the governor shall investigate the issues raised by the contest, hearing all legal evidence presented by the parties.

Amended by Acts 1989, 71st Leg., ch. 163, § 11, eff. Sept. 1, 1989.

Historical and Statutory Notes

1989 Legislation
The 1989 amendment substituted references to the governor for references to the state board of canvassers.

§ 243.007. Master of Discovery

(a) The governor may appoint a master of discovery for the contest. The master has the authority of a master appointed under Section 241.009.

(b) The master must be a resident of the state who:

(1) is not employed by or related within the third degree by consanguinity or affinity, as determined under Chapter 573, Government Code, to a party to the contest; and

(2) is not an officer of a political party that had a presidential nominee on the ballot of the contested election.

Amended by Acts 1989, 71st Leg., ch. 163, § 12, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 561, § 19, eff. Aug. 26, 1991; Acts 1995, 74th Leg., ch. 76, § 5.95(27), eff. Sept. 1, 1995.

Historical and Statutory Notes

1989 Legislation

The 1989 amendment in subsec. (a) substituted "governor" for "state board of canvassers".

1991 Legislation

The 1991 amendment, in subsec. (b), provided that consanguinity or affinity was to be "as determined under article 5996h, Revised Statutes."

§ 243.008. Discovery and Depositions

(a) Any party to a contest may conduct discovery and take depositions under the procedures applicable to a civil suit in the district court, subject to changes in those procedures or limitations imposed by the governor or the master of discovery.

(b) Each party is responsible for the initial payment of the party's costs of discovery and taking depositions, but the costs may be assessed as provided by Section 243.013.

Amended by Acts 1989, 71st Leg., ch. 163, § 13, eff. Sept. 1, 1989.

Historical and Statutory Notes

1989 Legislation

The 1989 amendment in subsec. (a) substituted "governor" for "state board of canvassers".

§ 243.009. Hearing Procedure

The governor shall determine the procedure for hearing an election contest.

Amended by Acts 1989, 71st Leg., ch. 163, § 14, eff. Sept. 1, 1989.

Historical and Statutory Notes

1989 Legislation

The 1989 amendment substituted "governor" for "state board of canvassers".

§ 243.010. Evidence

Except as otherwise provided by the governor, the rules of evidence generally applicable to a civil suit in the district court apply to the hearing of an election contest.

Amended by Acts 1989, 71st Leg., ch. 163, § 14, eff. Sept. 1, 1989.

Historical and Statutory Notes

1989 Legislation

The 1989 amendment substituted "governor" for "state board of canvassers".

§ 243.011. Attendance of Witnesses

(a) The governor has the same authority as a district court in an election contest to require the attendance of witnesses and the production of evidence. The secretary of state shall issue in the name of the governor subpoenas or other process as directed by the governor.

ELECTION CONTESTS

§ 243.013

Title. 14

(b) Any sheriff or constable of the state or a person appointed by the governor may serve the process issued by the secretary of state.

(c) Compliance with process issued under this chapter may be enforced in the manner provided for enforcement of process issued under Chapter 2001, Government Code.

(d) The summoned witnesses and the officers serving the process are entitled to mileage and fees as prescribed by law in a civil suit in the district court.

(e) Each party is responsible for the initial payment of the costs for service of process and attendance of witnesses at the party's request, but the costs may be assessed as provided by Section 243.013.

Amended by Acts 1989, 71st Leg., ch. 163, § 15, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 76, § 5.95(49), eff. Sept. 1, 1995.

Historical and Statutory Notes

1989 Legislation

The 1989 amendment in subsecs. (a) and (b) substituted references to the governor for references to the state board of canvassers.

§ 243.012. Disposition of Contest

(a) The governor shall determine the outcome of the contested election and render the decision not later than the seventh day before the date set by law for the meeting of the electors.

(b) The decision shall declare which set of presidential elector candidates was elected.

(c) The decision shall be in writing and signed by the governor.

(d) Section 221.012(b) does not apply to a contest of an election of presidential electors.

Amended by Acts 1989, 71st Leg., ch. 163, § 16, eff. Sept. 1, 1989.

Historical and Statutory Notes

1989 Legislation

The 1989 amendment in subsec. (a) substituted "governor" for "state board of canvassers" and

substituted "the decision" for "its decision", and in subsec. (c) substituted "the governor" for "at least two members of the board".

§ 243.013. Costs of Contest

The governor may assess the costs of the contest against any one or more of the parties.

Amended by Acts 1989, 71st Leg., ch. 163, § 17, eff. Sept. 1, 1989.

Historical and Statutory Notes

1989 Legislation

The 1989 amendment substituted "governor" for "state board of canvassers".

TITLE 15. REGULATING POLITICAL FUNDS AND CAMPAIGNS

Acts 1987, 70th Leg., ch. 899, revised Title 15 of the Election Code, effective September 1, 1987.

DISPOSITION TABLE

Showing where the subject matter of former Title 15 of the Election Code is covered in revised Title 15.

Former Sections	Revised Sections	Former Sections	Revised Sections
251.001(1)(2)	251.001		253.100(a) to (c)
251.001(3)	253.091		253.101(a)
	253.092		253.102(b)
	253.093		253.103(a)
251.001(4) to (18)	251.001	251.010(d)	253.131(a) to (c), (d)(1)
251.002(a)	—		253.132(a), (b)(1)
251.002(b)(1), (c), (d)	252.001		253.133
	252.0031	251.010(e)	253.094(c)
	252.005		253.101(b)
	252.006		253.102(c)
	252.007		253.103(c)
	252.009	251.010(f)	253.095
251.002(b)(2)	252.015(a), (b)	251.010(g)	253.003(d)
251.002(e)	252.012	251.011(a)	254.001(a) to (c)
	252.015(c)	251.011(b)	—
251.002(f)	253.031(a) to (d)	251.011(c)(1)	254.031(a)
251.002(g)	253.005(a), (b)	251.011(c)(2)	254.061(2)
251.002(h)	252.004		254.121(2)
251.002(i)	—		254.151(2)
251.002(j)	—	251.011(c)(3)	254.151(6)
251.002(k)	252.0032	251.011(c)(4)	254.121(6)
251.003(a)	253.061		254.151(7)
	253.062	251.011(c)(5)	254.034
251.003(b)	253.063	251.011(c)(6)	254.035
251.003(c)	253.001(a)	251.011(d)	254.038(a), (c)
251.003(d)	253.002(a), (b)	251.011(e)(1)	252.003
251.003(e)(1)	253.096	251.011(e)(2)	—
251.003(e)(2)	253.097	251.011(e)(3)	—
251.004	253.033(a)	251.011(f)	254.036(b)
251.005	253.034(a) to (c)	251.011(g)	251.007
251.006	251.002(b)		254.037
251.007	253.035(a), (d) to (f)		254.066
251.008(a), (b)	253.131(a) to (c), (d)(1)		254.097
251.008(c)	253.133		254.130
251.009	253.001(b)		254.163
	253.002(c)	251.011(h)	251.001(15)
	253.003(a) to (c)		253.032(a), (b), (d)
	253.004	251.011(i)(1)(A)	—
	253.005(c)	251.011(i)(1)(B)(i)	254.093
	253.031(e)	251.011(i)(1)(B)(ii)	254.094
	253.032(c)	251.011(i)(2)	254.153
	253.033(b)	251.011(i)(3)	254.129
	253.034(d)		254.162
	255.003(c)	251.011(i)(4)(A)	254.063
251.010(a)	253.094(a)		254.123
	253.096	251.011(i)(4)(B)(i)	254.064(a) to (d)
	253.097		254.124(a) to (f)
251.010(b)	251.001(18)	251.011(i)(4)(B)(ii)	254.064(e)
251.010(c)	253.098(a)		254.124(e)
	253.099(a)	251.011(i)(4)(B)(iii)	—

REGULATING FUNDS & CAMPAIGNS

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Former Sections	Revised Sections	Former Sections	Revised Sections
251.011(i)(4)(C)	254.123	251.012(h)	254.204(d)
251.011(i)(5)(A)	254.153	251.013(a)	254.181(a)
251.011(i)(5)(B)	254.154(b)	251.013(b)	254.182
251.011(i)(5)(C)	254.154(c)	251.013(c)	254.184(b)
251.011(i)(5)(D)	—	251.013(d)	254.183
251.011(i)(5)(E)	254.154(e)	251.013(e)	254.181(b)
251.011(i)(5)(F)	254.154(d)	251.013(f)	254.184(a)
251.011(i)(6)(A)	254.155(a), (b)	251.014(a) to (c), (d)	254.042
251.011(i)(6)(B)	254.156	251.015(a)	255.001(a), (c)
	254.157		255.004(a), (c)
251.011(i)(6)(C)	254.155(c)	251.015(b)	255.002(a) to (d)
251.011(i)(7)	251.006	251.015(c)	255.003(a), (b)
251.011(i)(8)	254.065(a), (b)	251.015(d)	—
	254.125	251.016(a)(1)	255.005(a)
251.011(i)(9)	254.152	251.016(a)(2)	255.004(b)
251.011(i)(10)	254.127	251.016(b)(1)	255.006(a)
	254.160	251.016(b)(2)	255.006(b)
251.011(j)(1)	254.041(a)(2), (b)	251.016(c)	255.004(c)
251.011(j)(2)	—		255.005(b)
251.011(k)	254.231(a), (b), (c)(1)		255.006(d)
251.011(l)	254.232	251.017(a)	256.001(a)
251.011(m)	254.040	251.017(b)	256.001(b)
251.011(n)	251.003	251.017(c)	256.002
251.011(o)	—	251.017(d)	256.005
251.011(p)	254.036(a)	251.017(e)	256.007
251.011(q)	252.015(b)	251.017(f)	256.006
251.012(a)	254.201	251.017(g)(1), (2)	251.032
251.012(b)	254.202	251.017(g)(3)	—
251.012(c)	—	251.017(g)(4)	251.031
	254.203(a), (b)	251.017(g)(5)	251.033(a)
251.012(d)	254.205	251.017(g)(6)	251.035
251.012(e)	254.204(a)	251.017(h)	251.034(a) to (d)
251.012(f)	254.204(b)	251.018	—
251.012(g)	254.204(c)	251.019	251.004

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Library References

State ethics advisory commission, see Brooks, 35 Texas Practice § 7.20.

Campaign contributions and expenditures, see Brooks, 35 Texas Practice § 11.22.

United States Supreme Court

Free speech, campaign finance laws, contribution limits, see Nixon v. Shrink Missouri government PAC, 2000, 120 S.Ct. 897.

CHAPTER 251. GENERAL PROVISIONS

SUBCHAPTER A. GENERAL PROVISIONS	Section	
Section		officeholder Contribution or Expenditure.
251.001. Definitions.		[Sections 251.010 to 251.030 reserved for expansion]
251.002. Officeholders Covered.		
251.003. Prohibition of Document Filing Fee.		
251.004. Venue.		SUBCHAPTER B. DUTIES OF COMMISSION
251.005. Out-of-State Committees Excluded.		
251.006. Federal Office Excluded.		
251.007. Timeliness of Action by Mail.	251.031.	Repealed.
251.008. Certain Political Club Meetings Excluded.	251.032.	Forms.
	251.033.	Notification of Deadline for Filing Reports.
251.009. Legislative Caucus Contribution or Expenditure Not Considered to be Of-	251.034, 251.035.	Repealed.

SUBCHAPTER A. GENERAL PROVISIONS

Cross References

Bribery, political contributions, see V.T.C.A., Penal Code § 36.02.

Computer records access system, information maintained under this title excluded, see V.T.C.A., Government Code § 405.018.

Ethics commission, advisory opinions about application of this chapter, see V.T.C.A., Government Code § 571.091.

Library References

Tex. Prac., County and Special District Law, ch. 11.

§ 251.001. Definitions

In this title:

(1) "Candidate" means a 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. Examples of affirmative action include:

(A) the filing of a campaign treasurer appointment, except that the filing does not constitute candidacy or an announcement of candidacy for purposes of the automatic resignation provisions of Article XVI, Section 65, or Article XI, Section 11, of the Texas Constitution;¹

(B) the filing of an application for a place on a ballot;

(C) the filing of an application for nomination by convention;

(D) the filing of a declaration of intent to become an independent candidate or a declaration of write-in candidacy;

(E) the making of a public announcement of a definite intent to run for public office in a particular election, regardless of whether the specific office is mentioned in the announcement;

(F) before a public announcement of intent, the making of a statement of definite intent to run for public office and the soliciting of support by letter or other mode of communication;

(G) the soliciting or accepting of a campaign contribution or the making of a campaign expenditure; and

(H) the seeking of the nomination of an executive committee of a political party to fill a vacancy.

(2) "Contribution" means a direct or indirect transfer of money, goods, services, or any other thing of value and includes an agreement made or other obligation incurred, whether

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legally enforceable or not, to make a transfer. The term includes a loan or extension of credit, other than those expressly excluded by this subdivision, and a guarantee of a loan or extension of credit, including a loan described by this subdivision. The term does not include:

(A) a loan made in the due course of business by a corporation that is legally engaged in the business of lending money and that has conducted the business continuously for more than one year before the loan is made; or

(B) an expenditure required to be reported under Section 305.006(b), Government Code.

(3) "Campaign contribution" means a contribution to a candidate or political committee that is offered or given with the intent that it be used in connection with a campaign for elective office or on a measure. Whether a contribution is made before, during, or after an election does not affect its status as a campaign contribution.

(4) "Officeholder contribution" means a contribution to an officeholder or political committee that is offered or given with the intent that it be used to defray expenses that:

(A) are incurred by the officeholder in performing a duty or engaging in an activity in connection with the office; and

(B) are not reimbursable with public money.

(5) "Political contribution" means a campaign contribution or an officeholder contribution.

(6) "Expenditure" means a payment of money or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a payment.

(7) "Campaign expenditure" means an expenditure made by any person in connection with a campaign for an elective office or on a measure. Whether an expenditure is made before, during, or after an election does not affect its status as a campaign expenditure.

(8) "Direct campaign expenditure" means a campaign expenditure that does not constitute a campaign contribution by the person making the expenditure.

(9) "Officeholder expenditure" means an expenditure made by any person to defray expenses that:

(A) are incurred by an officeholder in performing a duty or engaging in an activity in connection with the office; and

(B) are not reimbursable with public money.

(10) "Political expenditure" means a campaign expenditure or an officeholder expenditure.

(11) "Reportable activity" means a political contribution, political expenditure, or other activity required to be reported under this title.

(12) "Political committee" means a group of persons that has as a principal purpose accepting political contributions or making political expenditures.

(13) "Specific-purpose committee" means a political committee that does not have among its principal purposes those of a general-purpose committee but does have among its principal purposes:

(A) supporting or opposing one or more:

(i) candidates, all of whom are identified and are seeking offices that are known; or

(ii) measures, all of which are identified;

(B) assisting one or more officeholders, all of whom are identified; or

(C) supporting or opposing only one candidate who is unidentified or who is seeking an office that is unknown.

(14) "General-purpose committee" means a political committee that has among its principal purposes:

(A) supporting or opposing:

(i) two or more candidates who are unidentified or are seeking offices that are unknown; or

(ii) one or more measures that are unidentified; or

(B) assisting two or more officeholders who are unidentified.

(15) "Out-of-state political committee" means a political committee that:

(A) makes political expenditures outside this state; and

(B) in the 12 months immediately preceding the making of a political expenditure by the committee inside this state (other than an expenditure made in connection with a campaign for a federal office or made for a federal officeholder), makes 80 percent or more of the committee's total political expenditures in any combination of elections outside this state and federal offices not voted on in this state.

(16) "Political advertising" means 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:

(A) in return for consideration, is published in a newspaper, magazine, or other periodical or is broadcast by radio or television; or

(B) appears in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication.

(17) "Campaign communication" means a written or oral communication relating to a campaign for nomination or election to public office or office of a political party or to a campaign on a measure.

(18) "Labor organization" means an agency, committee, or any other organization in which employees participate that exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(19) "Measure" means a question or proposal submitted in an election for an expression of the voters' will and includes the circulation and submission of a petition to determine whether a question or proposal is required to be submitted in an election for an expression of the voters' will.

(20) "Commission" means the Texas Ethics Commission.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 304, § 5.01, eff. Jan. 1, 1992.

1 Vernon's Ann.Tex.Const. Art. XVI, § 65, or Art. XI, § 11.

Historical and Statutory Notes

1991 Legislation

The 1991 amendment, in subd. (2), in the introductory paragraph, inserted the second sentence, deleted par. (A), which read "an honorarium to a public servant that is excluded from the application of penal sanctions by Section 36.10(3), Penal Code", designated former par. (B) as par. (A), and added par. (B); in subd. (13), added par. (C); in subd. (14), deleted "one or more" following "opposing" in par. (A), inserted "two or more" in par. (A)(i); inserted "one or more" in par. (A)(ii), and substituted "two" for "one" in par. (B); and added the definition of "Commission."

Subsections (a), (b) and (d) of § 8.01 of the 1991 act provide:

"(a) Except as provided by Subsection (d) of this section, this Act takes effect January 1, 1992, and applies only to a gift, contribution, expenditure,

honorarium, compensation, reimbursement, benefit, or other thing of value offered, made, received, or accepted on or after that date.

"(b) A gift, contribution, expenditure, honorarium, compensation, reimbursement, benefit, or other thing of value offered, made, received, or accepted before the effective date of this Act is governed by the law in effect on the date that it was offered, made, received, or accepted, and that law is continued in effect for that purpose."

"(d) Section 1.38 of this Act takes effect January 1, 1993."

Derivation:

Acts 1986, 69th Leg., 3rd C.S., ch. 14, § 36.

V.T.C.A. Election Code, §§ 251.001, 251.011(h) (part).

Cross References

Lobbyist expenditures report, contributions defined under this section excepted, see V.T.C.A., Government Code § 305.006.
Lobbyists,

Expenditure restriction as not applying to a political contribution as defined by this section, see V.T.C.A., Government Code § 305.025.

Library References

Campaign contributions and expenditures, see
Brooks, 35 Texas Practice § 11.22.

United States Supreme Court

First amendment, restrictions on corporate elec-
tion expenditures, see Federal Election Com'n v. Massachusetts Citizens for Life, Inc., U.S.Mass.
1986, 107 S.Ct. 616, 479 U.S. 238, 93 L.Ed.2d 539.

Notes of Decisions

Elections 8
Officeholder contributions 4.4

4. Contributions

A corporation that extends credit to a candidate does not make an illegal political contribution, provided that the extension of credit is motivated by normal business practice rather than an intent to aid the candidate's campaign. Whether a corporation extended credit to a candidate with the intent to aid the candidate's campaign is a fact question. *Tex.Ethics Comm.Op. No. 262 (1995)*.

Waiver of a membership fee to a private club is a "benefit" purposes of Chapter 36 of the Penal Code. Generally, a candidate or officeholder could accept an offer to use the facilities of a private club for campaign or officeholder purposes. Such a contribution would not be permissible, however, if the club were incorporated. If a candidate or officeholder accepted the opportunity to use the facilities of a private club as a campaign contribution or an officeholder contribution, the candidate or officeholder could not use the facilities for personal purposes unrelated to his or her candidacy or to his or her duties or activities of office. *Tex.Ethics Comm.Op. No. 268 (1995)*.

Whether the provision of an opportunity to appear at an event constitutes a political contribution depends upon the intent with which the opportunity is provided. *Tex.Ethics Comm.Op. No. 346 (1996)*.

Contributions to a legislator for a legal defense fund to cover the expenses of defending two lawsuits brought against the legislator in a private professional capacity would not be officeholder contributions. Further, the legislator may not use political contributions on hand to pay the expenses of defending the lawsuits. The provision of legal services at no charge would be a "benefit" for purposes of Chapter 36 of the Penal Code. *Tex.Ethics Comm.Op. No. 363 (1997)*.

The amount of a political contribution is not reduced by the amount of any consideration received in exchange for the contribution. *Tex.Ethics Comm.Op. No. 382 (1997)*.

4.4. Officeholder contributions

Contributions collected by an officeholder's son where a retirement party for the officeholder are "officeholder contributions" subject to Title 15 of the Election Code if the officeholder plays a deci-

sion-making role in regard to the party. *Tex.Ethics Comm.Op. No. 332 (1996)*.

Contributions to an officeholder made with the intent to defray expenses incurred by the officeholder in connection with an investigation of the officeholder for alleged official misconduct are "officeholder contributions" for purposes of Title 15 of the Election Code. *Tex.Ethics Comm.Op. No. 334 (1996)*

A contribution from a corporation to a county or district clerk that is intended to defray the clerk's costs of running for an elective position with an association of county or district clerks is a prohibited "officeholder contribution" unless the costs are reimbursable with public money. *Tex.Ethics Comm.Op. No. 396 (1998)*.

5. Expenditures

In judge's action against defendants arising from improper expenditures for advertising during judge's reelection campaign, finding that defendant made direct expenditure in opposition to judge or in support of judge's opponent was supported by evidence of advertisement encouraging voters to vote for judge's opponent if voters wanted judge who understood that courthouse existed for the people. *Osterberg v. Peca (App. 8 Dist. 1997) 952 S.W.2d 121*, review granted, affirmed in part, reversed in part, rehearing overruled, withdrawn and superseded on overruling of rehearing *12 S.W.3d 31*, certiorari denied *120 S.Ct. 2690*, *530 U.S. 1244*, *147 L.Ed.2d 962*.

Payment of a fine for filing a late report with the Texas Ethics Commission is a political expenditure. *Tex.Ethics Comm.Op. No. 206 (1994)*.

6. Political committees

A nonprofit corporation formed to produce an informational newsletter for distribution to a city council member's constituents must form a political committee, since such a publication would constitute an officeholder contribution. *Tex.Ethics Comm.Op. No. 242 (1995)*.

A group that accepts contributions and makes expenditures to assist members of the legislature acting in their capacity as legislators in filing a law suit is a political committee for purposes of Title 15 of the Election Code. *Tex.Ethics Comm.Op. No. 270 (1995)*.

7. Political advertising

A brochure that lists the duties of a justice of the peace and that bears the name, courthouse

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Note 7

address, and courthouse phone number of a specific justice of the peace is not political advertising that may not be paid for with public funds. Tex.Ethics Comm.Op. No. 211 (1994).

8. Elections

Democratic primary election was "election," under Election Code, and was not "elimination round" in general election, and thus, unsuccessful

§ 251.002. Officeholders Covered

(a) The provisions of this title applicable to an officeholder apply only to a person who holds an elective public office and to the secretary of state.¹

(b) For purposes of this title, a state officer-elect or a member-elect of the legislature is considered an officeholder beginning on the day after the date of the general or special election at which the officer-elect or member-elect was elected. This subsection does not relieve a state officer-elect or member-elect of the legislature of any reporting requirements the person may have as a candidate under this title.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987.

¹As provided in Acts 1991, 72nd Leg., ch. 304, § 1.39(b), references to the secretary of state are considered to be references to the Texas Ethics Commission.

Historical and Statutory Notes

1989 Legislation

Without reference to the revision of this title by Acts 1987, 70th Leg., ch. 899, § 1, former § 251.002, relating to appointment of campaign treasurer, was amended by Acts 1987, 70th Leg., ch. 427, § 8, adding subsec. (k), and Acts 1987, 70th Leg., ch. 487, § 1, amending subsec. (b)(1).

Acts 1987, 70th Leg., ch. 427, § 8, and ch. 487, § 1, were repealed by Acts 1989, 71st Leg., ch. 2, § 7.15(b) eff. Aug. 20, 1989. See, now, §§ 252.0031 and 252.0032.

Derivation:

V.T.C.A. Election Code, § 251.006.

Notes of Decisions

City regulation 2

Elected officials 1

1. Elected officials

Requirements of election code with regard to duties of office holders to submit accompanying affidavits and reports for each year for which office is held created duty which is imposed only on elected public officials. State v. Denton (App. 3 Dist. 1995) 893 S.W.2d 125, petition for discretionary review refused.

2. City regulation

Legislature has not preempted the entire subject matter of campaign finance from regulation by home-rule cities. Therefore, a particular provision of a city campaign finance ordinance is preempted by state law only if it is not possible to give effect to both that provision and to the provisions of Title 15 of the Election Code. The Ethics Commission does not have jurisdiction to determine whether specific provisions of a city campaign finance ordinance are in conflict with Title 15. Tex.Ethics Comm.Op. No. 328 (1996).

§ 251.003. Prohibition of Document Filing Fee

A charge may not be made for filing a document required to be filed under this title.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987.

Library References

Campaign contributions and expenditures, see Brooks, 35 Texas Practice § 11.22.

§ 251.004. Venue

(a) Venue for a criminal offense prescribed by this title is in the county of residence of the defendant, unless the defendant is not a Texas resident, in which case venue is in Travis County.

(b) Venue for the recovery of delinquent civil penalties imposed by the commission under this title is in Travis County.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987; Acts 1997, 75th Leg., ch. 1134, § 1, eff. Sept. 1, 1997.

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candidate for Supreme Court had no standing to challenge his opponent's alleged campaign contribution and reporting violations in primary election, where unsuccessful candidate did not become opposing candidate until after primary election. Howell v. Mauzy (App. 3 Dist. 1994) 899 S.W.2d 690, writ denied, rehearing of writ of error overruled.

Historical and Statutory Notes

1997 Legislation

Section 22 of Acts 1997, 75th Leg., ch. 1134, provides:

“(a) The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. For the purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

“(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.”

Derivation:

V.T.C.A. Election Code, § 251.019.

Notes of Decisions

Residence 1

1. Residence

Successful candidate for Supreme Court had residence in Travis County at time unsuccessful candidate filed lawsuit alleging violations of cam-

paign contribution and expenditure reporting requirements, and thus, venue was proper in Travis County under either permissive venue statute or under Election Code, where successful candidate was in process of moving residence from Dallas County to Travis County. *Howell v. Mauzy* (App. 3 Dist. 1994) 899 S.W.2d 690, writ denied, rehearing of writ of error overruled.

§ 251.005. Out-of-State Committees Excluded

(a) An out-of-state political committee is not subject to Chapter 252 or 254, except as provided by Subsection (b) or (c).

(b) If an out-of-state committee decides to file a campaign treasurer appointment under Chapter 252, at the time the appointment is filed the committee becomes subject to this title to the same extent as a political committee that is not an out-of-state committee.

(c) If an out-of-state committee performs an activity that removes the committee from out-of-state status as defined by Section 251.001(15), the committee becomes subject to this title to the same extent as a political committee that is not an out-of-state committee.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987.

Notes of Decisions

Out-of-state campaigns 1

1. Out-of-state campaigns

General-purpose political committees are not required to report political expenditures made in

connection with out-of-state campaigns, officeholders, or measures on reports filed under Chapter 254 of the Texas Election Code. *Tex.Ethics Comm.Op. No. 208* (1994).

§ 251.006. Federal Office Excluded

(a) Except as provided by Subsection (b), this title does not apply to a candidate for an office of the federal government.

(b) A candidate for an elective office of the federal government shall file with the commission a copy of each document relating to the candidacy that is required to be filed under federal law. The document shall be filed within the same period in which it is required to be filed under the federal law.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 107, § 3.01, eff. Aug. 30, 1993; Acts 1997, 75th Leg., ch. 864, § 236, eff. Sept. 1, 1997.

Historical and Statutory Notes

1993 Legislation

The 1993 amendment, to conform to § 1.39(b), of Acts 1991, 72nd Leg., ch. 304, substituted a reference to the commission for a reference to the secretary of state.

Derivation:

V.T.C.A. Election Code, § 251.011(i)(7).

Library References

Campaign contributions and expenditures, see
Brooks, 35 Texas Practice § 11.22.

§ 251.007. Timeliness of Action by Mail

When this title requires a notice, report, or other document or paper to be delivered, submitted, or filed within a specified period or before a specified deadline, a delivery, submission, or filing by first-class United States mail or common or contract carrier is timely, except as otherwise provided by this title, if:

- (1) it is properly addressed with postage or handling charges prepaid; and
- (2) it bears a post office cancellation mark or a receipt mark of a common or contract carrier indicating a time within the period or before the deadline, or if the person required to take the action furnishes satisfactory proof that it was deposited in the mail or with a common or contract carrier within the period or before the deadline.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987.

Historical and Statutory Notes

Derivation: .

V.T.C.A. Election Code, § 251.011(g)(part).

§ 251.008. Certain Political Club Meetings Excluded

(a) An expense incurred in connection with the conduct of a meeting of an organization or club affiliated with a political party at which a candidate for an office regularly filled at the general election for state and county officers, or a person holding that office, appears before the members of the organization or club is not considered to be a political contribution or political expenditure if no political contributions are made to or solicited for the candidate or officeholder at the meeting.

(b) In this section, an organization or club is affiliated with a political party if it:

- (1) supports the nominees of that political party but does not support any candidate seeking the party's nomination for an office over any other candidate seeking that nomination; and
- (2) is recognized by the political party as an auxiliary of the party.

Added by Acts 1989, 71st Leg., ch. 422, § 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 752, § 1, eff. Sept. 1, 1995.

§ 251.009. Legislative Caucus Contribution or Expenditure Not Considered to be Officeholder Contribution or Expenditure

A contribution to or expenditure by a legislative caucus, as defined by Section 253.0341, is not considered to be an officeholder contribution or officeholder expenditure for purposes of this title.

Added by Acts 1995, 74th Leg., ch. 43, § 4, eff. Aug. 28, 1995.

[Sections 251.010 to 251.030 reserved for expansion]

Annotations Under Reserved Sections

SECTION 251.010

United States Supreme Court

Contributions or expenditures by corporations to influence election, statutory prohibitions, see First Nat. Bank of Boston v. Bellotti, U.S.Mass.1978, 98 S.Ct. 1407, 435 U.S. 765, 55 L.Ed.2d 707, rehearing denied 98 S.Ct. 3126, 438 U.S. 907, 57 L.Ed.2d 1150.

Library References

Accepting contribution from corporation, complaints, informations and indictments, see McCormick et al., 7 Texas Practice § 34.06 (10th ed.).

Making contribution by corporation, complaints, informations and indictments, see McCormick et al., 7 Texas Practice § 34.07 (10th ed.).

SECTION 251.015

Library References

Unlawful political advertising, misdemeanor, complaints, informations and indictments, see McCormick et al., 7 Texas Practice § 34.08 (10th ed.).

Unlawful political advertising, felony, complaints, informations and indictments, see McCormick et al., 7 Texas Practice § 34.09 (10th ed.).

SECTION 251.016

Library References

Unlawful use of title of office, complaints, informations and indictments, see McCormick et al., 7 Texas Practice § 34.10 (10th ed.).

SUBCHAPTER B. DUTIES OF COMMISSION

Acts 1999, 76th Leg., ch. 62, § 5.15 amended the subchapter heading.

Historical and Statutory Notes

1993 Legislation

The 1993 amendment, to conform to § 1.39(b), of Acts 1991, 72nd Leg., ch. 304, in the subchapter

heading, substituted a reference to the commission for a reference to the secretary of state.

Cross References

Oaths, affidavits, and affirmations, administration by employee of Secretary of State with duties

under this title, see V.T.C.A., Government Code § 602.002.

§ 251.031. Repealed by Acts 1991, 72nd Leg., ch. 304, § 5.20, eff. Jan. 1, 1992

Historical and Statutory Notes

The repealed section, authorizing the secretary of state to interpret and administer the title, was

derived from V.T.C.A. Election Code, § 251.017(g)(4); Acts 1987, 70th Leg., ch. 899, § 1.

§ 251.032. Forms

In addition to furnishing samples of the appropriate forms to the authorities having administrative duties under this title, the commission shall furnish the forms to each political party's state executive committee and county chair of each county executive committee.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 107, § 3.03, eff. Aug. 30, 1993; Acts 1997, 75th Leg., ch. 864, § 237, eff. Sept. 1, 1997.

Historical and Statutory Notes

1993 Legislation

The 1993 amendment, to conform to § 1.39(b), of Acts 1991, 72nd Leg., ch. 304, substituted a reference to the commission for a reference to the secretary of state.

Derivation:

V.T.C.A. Election Code, § 251.017(g)(1), (2).

Library References

Campaign contributions and expenditures, see
Brooks, 35 Texas Practice § 11.22.

§ 251.033. Notification of Deadline for Filing Reports

(a) The commission shall notify each person responsible for filing a report with the commission under Subchapters C through F, Chapter 254,¹ of the deadline for filing a report, except that notice of the deadline is not required for a political committee involved in an election other than a primary election or the general election for state and county officers.

(b) If the commission is unable to notify a person of a deadline after two attempts, the commission is not required to make any further attempts to notify the person of that deadline or any future deadlines until the person has notified the commission of the person's current address.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 107, § 3.04, eff. Aug. 30, 1993.

¹ Section 254.061 et seq. through § 254.151 et seq.

Historical and Statutory Notes

1993 Legislation

The 1993 amendment, to conform to § 1.39(b), of Acts 1991, 72nd Leg., ch. 304, substituted references to the commission for references to the secretary of state.

Derivation:

V.T.C.A. Election Code, § 251.017(g)(5).

Cross References

Forms to be mailed to each person required to file a report, see V.T.C.A., Election Code § 254.036.

§§ 251.034, 251.035. Repealed by Acts 1991, 72nd Leg., ch. 304, § 5.20, eff. Jan. 1, 1992

Historical and Statutory Notes

Repealed § 251.034, relating to review by the secretary of state of reports filed with the secretary under title 15, was derived from V.T.C.A. Election Code, § 251.017(h); Acts 1987, 70th Leg., ch. 899, § 1.

Repealed § 251.035, relating to the annual report of the secretary of state to the governor and

legislature concerning administration and interpretation of title 15, was derived from V.T.C.A. Election Code, § 251.017(g)(6); Acts 1987, 70th Leg., ch. 899, § 1.

CHAPTER 252. CAMPAIGN TREASURER

Section		Section	
252.001.	Appointment of Campaign Treasurer Required.	252.007.	Authority With Whom Appointment Filed: Specific-Purpose Committee for Supporting or Opposing Measure.
252.002.	Contents of Appointment.	252.008.	Multiple Filings by Specific-Purpose Committee not Required.
252.003.	Contents of Appointment by General-Purpose Committee.	252.009.	Authority With Whom Appointment Filed: General-Purpose Committee.
252.0031.	Contents of Appointment by Specific-Purpose Committee.	252.010.	Transfer of Appointment.
252.0032.	Contents of Appointment by Candidate.	252.011.	Time Appointment Takes Effect; Period of Effectiveness.
252.004.	Designation of Oneself.	252.012.	Removal of Campaign Treasurer.
252.005.	Authority With Whom Appointment Filed: Candidate.	252.013.	Termination of Appointment on Vacating Position.
252.006.	Authority With Whom Appointment Filed: Specific-Purpose Committee for Supporting or Opposing Candidate or Assisting Officeholder.	252.014.	Preservation of Filed Appointments.

Title 15

Section

252.015. Assistant Campaign Treasurer.

Cross References

Out-of-state political committees, limitations on contributions, see V.T.C.A., Election Code § 253.032.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

§ 252.001. Appointment of Campaign Treasurer Required

Each candidate and each political committee shall appoint a campaign treasurer as provided by this chapter.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987.

Historical and Statutory Notes

Derivation:

V.T.C.A. Election Code, § 251.002(b)(1)(part), (c)(part), (d)(part).

Cross References

County executive committee, filing of campaign treasurer appointment, see V.T.C.A., Election Code § 253.031.

Notes of Decisions

In general 1

1. In general

A precinct chair of a political party wishing to solicit political contributions to be used on campaign activities for his party's candidates must file

an appointment of campaign treasurer of a general-purpose committee before exceeding \$500 in political contributions or political expenditures. The treasurer of the committee would be required to follow the recordkeeping and reporting requirements of Chapter 254 of the Election Code. Tex.Ethics Comm.Op. No. 320 (1996).

§ 252.002. Contents of Appointment

(a) A campaign treasurer appointment must be in writing and include:

- (1) the campaign treasurer's name;
- (2) the campaign treasurer's residence or business street address;
- (3) the campaign treasurer's telephone number; and
- (4) the name of the person making the appointment.

(b) A political committee that files its campaign treasurer appointment with the commission must notify the commission in writing of any change in the campaign treasurer's address not later than the 10th day after the date on which the change occurs.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 107, § 3.05, eff. Aug. 30, 1993.

Historical and Statutory Notes

1993 Legislation

The 1993 amendment, to conform to § 1.39(b), of Acts 1991, 72nd Leg., ch. 304, in subsec. (b), substi-

tuted references to the commission for references to the secretary of state.

§ 252.003. Contents of Appointment by General-Purpose Committee

(a) In addition to the information required by Section 252.002, a campaign treasurer appointment by a general-purpose committee must include:

(1) the full name, and any acronym of the name that will be used in the name of the committee as provided by Subsection (d), of each corporation, labor organization, or other association or legal entity that directly establishes, administers, or controls the committee, if applicable, or the name of each person who determines to whom the committee makes contributions or the name of each person who determines for what purposes the committee makes expenditures;

(2) the full name and address of each general-purpose committee to whom the committee intends to make political contributions; and

(3) the name of the committee and, if the name is an acronym, the words the acronym represents.

(b) If any of the information required to be included in a general-purpose committee's appointment changes, excluding changes reported under Section 252.002(b), the committee shall file an amended appointment with the commission not later than the 30th day after the date the change occurs.

(c) The name of a general-purpose committee may not be the same as or deceptively similar to the name of any other general-purpose committee whose campaign treasurer appointment is filed with the commission. The commission shall determine whether the name of a general-purpose political committee is in violation of this prohibition and shall immediately notify the campaign treasurer of the offending political committee of that determination. The campaign treasurer of the political committee must file a name change with the commission not later than the 14th day after the date of notification. A campaign treasurer who fails to file a name change as provided by this subsection or a political committee that continues to use a prohibited name after its campaign treasurer has been notified by the commission commits an offense. An offense under this subsection is a Class B misdemeanor.

(d) The name of a general-purpose committee must include the name of each corporation, labor organization, or other association or legal entity other than an individual that directly establishes, administers, or controls the committee. The name of an entity that is required to be included in the name of the committee may be a commonly recognized acronym by which the entity is known.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 304, § 5.02, eff. Jan. 1, 1992; Acts 1993, 73rd Leg., ch. 107, § 3.06, eff. Aug. 30, 1993.

Historical and Statutory Notes

1991 Legislation

The 1991 amendment, in subsec. (a), in subd. (1), inserted "full" and ", and any acronym of the name that will be used in the name of the committee as provided by Subsection (d)"; and added subsec. (d).

(c), substituted references to the commission for references to the secretary of state.

Derivation:

V.T.C.A. Election Code, § 251.011(e)(1).

1993 Legislation

The 1993 amendment, to conform to § 1.39(b), of Acts 1991, 72nd Leg., ch. 304, in subsecs. (b) and

Notes of Decisions

Contents of appointment 2
Name 1

1. Name

A general-purpose committee is not required to include the name of a legal entity in its name simply because the legal entity contributes money for the establishment or administration of the committee. A general-purpose committee must in-

clude in its name the name of a legal entity that plays a role in the decisionmaking process of a general-purpose committee; overruling Tex.Ethics Comm.Op. No. 32 (1992). Tex.Ethics Comm.Op. No. 145 (1993).

A corporation may pay the expenses of a forum sponsored by a political committee if the content of the forum is unrelated to activities governed by title 15 of the Election Code. The name of a corporation that designates individuals to serve on

the board of a general-purpose committee must be included in the name of the political committee, whether or not the individuals designated by the corporation constitute a majority on the board. Tex.Ethics Comm.Op. No. 168 (1993).

2. Contents of appointment

If an out-of-state employee group is a "general-purpose committee" under the Texas Election

Code, then a Texas general-purpose committee is required to include the name and address of the out-of-state employee group in its appointment of campaign treasurer as a "general-purpose committee" to whom the committee intends to make political contributions" before the Texas committee may make a contribution to the out-of-state committee. Tex.Ethics Comm.Op. No. 65 (1992).

§ 252.0031. Contents of Appointment by Specific-Purpose Committee

(a) In addition to the information required by Section 252.002, a campaign treasurer appointment by a specific-purpose committee for supporting or opposing a candidate for an office specified by Section 252.005(1) must include the name of and the office sought by the candidate. If that information changes, the committee shall immediately file an amended appointment reflecting the change.

(b) The name of a specific-purpose committee for supporting a candidate for an office specified by Section 252.005(1) must include the name of the candidate that the committee supports.

Added by Acts 1989, 71st Leg., ch. 2, § 7.15(a), eff. Aug. 28, 1989. Amended by Acts 1991, 72nd Leg., ch. 304, § 5.03, eff. Jan. 1, 1992.

Historical and Statutory Notes

1989 Legislation

The 1989 Act added this section to conform to Acts 1987, 70th Leg., ch. 487, § 1.

1991 Legislation

The 1991 amendment designated subsec. (a), and added subsec. (b).

Derivation:

Acts 1987, 70th Leg., ch. 487, § 1.

Acts 1989, 71st Leg., ch. 2, § 7.15(b).

V.T.C.A. Election Code, § 251.002(b)(1).

§ 252.0032. Contents of Appointment by Candidate

(a) In addition to the information required by Section 252.002, a campaign treasurer appointment by a candidate must include:

(1) the candidate's telephone number; and

(2) a statement, signed by the candidate, that the candidate is aware of the nepotism law, Chapter 573, Government Code.

(b) A campaign treasurer appointment that is filed in a manner other than by use of an officially prescribed form is not invalid because it fails to comply with Subsection (a)(2).

Added by Acts 1989, 71st Leg., ch. 2, § 7.15(a), eff. Aug. 28, 1989. Amended by Acts 1993, 73rd Leg., ch. 107, § 3A.03, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 76, § 5.95(26), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1134, § 2, eff. Sept. 1, 1997.

Historical and Statutory Notes

1989 Legislation

The 1989 Act added this section to conform to Acts 1987, 70th Leg., ch. 427, § 8.

1993 Legislation

The 1993 amendment, to conform to §§ 1 and 2 of Acts 1991, 72nd Leg., ch. 561, in subsec. (a), substituted "et seq." for "through 5996g of the".

Derivation:

Acts 1987, 70th Leg., ch. 427, § 8.

Acts 1989, 71st Leg., ch. 2, § 7.15(b).

V.T.C.A. Election Code, § 252.002(k).

§ 252.004. Designation of Oneself

An individual may appoint himself or herself as campaign treasurer.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987; Acts 1997, 75th Leg., ch. 864, § 238, eff. Sept. 1, 1997.

Historical and Statutory Notes

Derivation:

V.T.C.A. Election Code, § 251.002(h).

§ 252.005. Authority With Whom Appointment Filed: Candidate

An individual must file a campaign treasurer appointment for the individual's own candidacy with:

(1) the commission, if the appointment is made for candidacy for:

- (A) a statewide office;
- (B) a district office filled by voters of more than one county;
- (C) a judicial district office filled by voters of only one county;
- (D) state senator;
- (E) state representative; or
- (F) the State Board of Education;

(2) the county clerk, if the appointment is made for candidacy for a county office, a precinct office, or a district office other than one included in Subdivision (1);

(3) the clerk or secretary of the governing body of the political subdivision or, if the political subdivision has no clerk or secretary, with the governing body's presiding officer, if the appointment is made for candidacy for an office of a political subdivision other than a county;

(4) the county clerk if:

- (A) the appointment is made for candidacy for an office of a political subdivision other than a county;
- (B) the governing body for the political subdivision has not been formed; and
- (C) no boundary of the political subdivision crosses a boundary of the county; or

(5) the commission if:

- (A) the appointment is made for candidacy for an office of a political subdivision other than a county;
- (B) the governing body for the political subdivision has not been formed; and
- (C) the political subdivision is situated in more than one county.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 107, § 3.07, eff. Aug. 30, 1993; Acts 1999, 76th Leg., ch. 511, § 1, eff. Sept. 1, 1999.

Historical and Statutory Notes

1993 Legislation

The 1993 amendment, to conform to § 1.39(b), of Acts 1991, 72nd Leg., ch. 304, in subds. (1) and (5), substituted references to the commission for references to the secretary of state.

1999 Legislation

Section 6(a) of Acts 1999, 76th Leg., ch. 511 provides:

"The change in law made by Section 252.005, Election Code, as amended by this Act, applies to a

campaign treasurer appointment filed on or after the effective date of this Act. A campaign treasurer appointment that is affected by that change in law and that was filed before the effective date of this Act shall be refiled with the Texas Ethics Commission not later than January 1, 2000."

Derivation:

V.T.C.A. Election Code, § 251.002(b)(1)(part), (c)(part), (d)(part).

Cross References

Campaign contributions and expenditures by political committees, filing deadline for appointment

under subd. (1) of this section, see V.T.C.A., Election Code § 253.031.

Notes of Decisions

Filing fees 1

the Campaign Reporting and Disclosure Act of 1973. Op.Atty.Gen.1974, No. H-235.

1. Filing fees

County clerks were required to collect reasonable fees for filing instruments submitted under

§ 252.006. Authority With Whom Appointment Filed: Specific-Purpose Committee for Supporting or Opposing Candidate or Assisting Officeholder

A specific-purpose committee for supporting or opposing a candidate or assisting an officeholder must file its campaign treasurer appointment with the same authority as the appointment for candidacy for the office.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987.

Historical and Statutory Notes

Derivation:

V.T.C.A. Election Code, § 251.002(b)(1)(part), (c)(part), (d)(part).

Notes of Decisions

Filing fees 1

the Campaign Reporting and Disclosure Act of 1973. Op.Atty.Gen.1974, No. H-235.

1. Filing fees

County clerks were required to collect reasonable fees for filing instruments submitted under

§ 252.007. Authority With Whom Appointment Filed: Specific-Purpose Committee for Supporting or Opposing Measure

A specific-purpose committee for supporting or opposing a measure must file its campaign treasurer appointment with:

(1) the commission, if the measure is to be submitted to voters of the entire state;

(2) the county clerk, if the measure is to be submitted to voters of a single county in an election ordered by a county authority;

(3) the secretary of the governing body of the political subdivision or, if the political subdivision has no secretary, with the governing body's presiding officer, if the measure is to be submitted at an election ordered by an authority of a political subdivision other than a county;

(4) the county clerk if:

(A) the measure concerns a political subdivision other than a county;

(B) the governing body for the political subdivision has not been formed; and

(C) no boundary of the political subdivision crosses a boundary of a county; or

(5) the commission if:

(A) the measure concerns a political subdivision other than a county;

(B) the governing body for the political subdivision has not been formed; and

(C) the political subdivision is situated in more than one county.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 107, § 3.08, eff. Aug. 30, 1993.

Historical and Statutory Notes

1993 Legislation

The 1993 amendment, to conform to § 1.39(b), of Acts 1991, 72nd Leg., ch. 304, in subs. (1) and (5), substituted references to the commission for references to the secretary of state.

Derivation:

V.T.C.A. Election Code, § 251.002(b)(1)(part), (c)(part), (d)(part).

Notes of Decisions

- Filing, generally 1
- Filing fees 2
- Office for filing 3

2. Filing fees

County clerks were required to collect reasonable fees for filing instruments submitted under the Campaign Reporting and Disclosure Act of 1973. Op.Atty.Gen.1974, No. H-235.

1. Filing, generally

A specific purpose political committee involved in an election to confirm the existence of a regional transportation authority under Vernon's Ann.Civ. St. art. 1118y should file its designation of campaign treasurer and its periodic sworn statements with the Secretary of State. Election Law Opinion No. JWF-14 (1983).

3. Office for filing

A political committee whose principal purpose is limited to supporting or opposing an identified city measure may not file its campaign treasurer appointment with the Ethics Commission, but must file it with the city secretary. Tex.Ethics Comm. Op. No. 10 (1992).

§ 252.008. Multiple Filings by Specific-Purpose Committee not Required

If under this chapter a specific-purpose committee is required to file its campaign treasurer appointment with more than one authority, the appointment need only be filed with the commission and, if so filed, need not be filed with the other authorities.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 107, § 3.09, eff. Aug. 30, 1993.

Historical and Statutory Notes

1993 Legislation

The 1993 amendment, to conform to § 1.39(b), of Acts 1991, 72nd Leg., ch. 304, substituted a refer-

ence to the commission for a reference to the secretary of state.

§ 252.009. Authority With Whom Appointment Filed: General-Purpose Committee

A general-purpose committee must file its campaign treasurer appointment with the commission.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 107, § 3.10, eff. Aug. 30, 1993.

Historical and Statutory Notes

1993 Legislation

The 1993 amendment, to conform to § 1.39(b), of Acts 1991, 72nd Leg., ch. 304, substituted a reference to the commission for a reference to the secretary of state.

Derivation:

V.T.C.A. Election Code, § 251.002(b)(1)(part), (c)(part), (d)(part).

Notes of Decisions

- Filing fees 1

the Campaign Reporting and Disclosure Act of 1973. Op.Atty.Gen.1974, No. H-235.

1. Filing fees

County clerks were required to collect reasonable fees for filing instruments submitted under

§ 252.010. **Transfer of Appointment**

(a) If a candidate who has filed a campaign treasurer appointment decides to seek a different office that would require the appointment to be filed with another authority, a copy of the appointment certified by the authority with whom it was originally filed must be filed with the other authority in addition to the new campaign treasurer appointment.

(b) The original appointment terminates on the filing of the copy with the appropriate authority or on the 10th day after the date the decision to seek a different office is made, whichever is earlier.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987.

§ 252.011. **Time Appointment Takes Effect; Period of Effectiveness**

(a) A campaign treasurer appointment takes effect at the time it is filed with the authority specified by this chapter.

(b) A campaign treasurer appointment continues in effect until terminated.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987.

§ 252.012. **Removal of Campaign Treasurer**

(a) A campaign treasurer appointed under this chapter may be removed at any time by the appointing authority by filing the written appointment of a successor in the same manner as the original appointment.

(b) The appointment of a successor terminates the appointment of the campaign treasurer who is removed.

(c) If the campaign treasurer of a specific-purpose political committee required to file its campaign treasurer appointment with the commission or of a general-purpose political committee is removed by the committee, the departing campaign treasurer shall immediately file written notification of the termination of appointment with the commission.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 107, § 3.11, eff. Aug. 30, 1993.

Historical and Statutory Notes

1993 Legislation

The 1993 amendment, to conform to § 1.39(b), of Acts 1991, 72nd Leg., ch. 304, in subsec. (c), substituted references to the commission for references to the secretary of state.

Derivation:

V.T.C.A. Election Code, § 251.002(e) (part).

§ 252.013. **Termination of Appointment on Vacating Position**

(a) If a campaign treasurer resigns or otherwise vacates the position, the appointment is terminated at the time the vacancy occurs.

(b) A campaign treasurer who vacates the treasurer's position shall immediately notify the appointing authority in writing of the vacancy.

(c) If the campaign treasurer of a specific-purpose political committee required to file its campaign treasurer appointment with the commission or of a general-purpose political committee resigns or otherwise vacates the position, the campaign treasurer shall immediately file written notification of the vacancy with the commission.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 107, § 3.12, eff. Aug. 30, 1993; Acts 1997, 75th Leg., ch. 864, § 239, eff. Sept. 1, 1997.

Historical and Statutory Notes

1993 Legislation

The 1993 amendment, to conform to § 1.39(b), of Acts 1991, 72nd Leg., ch. 304, in subsec. (c), substi-

tuted references to the commission for references to the secretary of state.

§ 252.014. **Preservation of Filed Appointments**

The authority with whom a campaign treasurer appointment is filed under this chapter shall preserve the appointment for two years after the date the appointment is terminated.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987.

§ 252.015. Assistant Campaign Treasurer

(a) Each specific-purpose committee for supporting or opposing a candidate for an office specified by Section 252.005(1) or a statewide or district measure and each general-purpose committee may appoint an assistant campaign treasurer by written appointment filed with the commission.

(b) In the campaign treasurer's absence, the assistant campaign treasurer has the same authority as a campaign treasurer.

(c) Sections 252.011, 252.012, 252.013, and 252.014 apply to the appointment and removal of an assistant campaign treasurer.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 107, § 3.13, eff. Aug. 30, 1993.

Historical and Statutory Notes

1993 Legislation

The 1993 amendment, to conform to § 1.39(b), of Acts 1991, 72nd Leg., ch. 304, in subsec. (a), substituted a reference to the commission for a reference to the secretary of state.

Derivation:

V.T.C.A. Election Code, § 251.002(b)(2), (e) (part).

CHAPTER 253. RESTRICTIONS ON CONTRIBUTIONS AND EXPENDITURES

SUBCHAPTER A. GENERAL RESTRICTIONS

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Section

[Sections 253.105 to 253.130 reserved for expansion]

Section

253.1601. Contribution to Certain Committees Considered Contribution to Candidate.

253.161. Use of Contribution from Nonjudicial or Judicial Office Prohibited.

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253.162. Restrictions on Reimbursement of Personal Funds and Payments on Certain Loans.

253.163. Notice Required for Certain Political Expenditures.

253.164. Voluntary Compliance.

253.165. Effect of Noncomplying Candidate.

253.166. Benefit to Complying Candidate.

253.167. Certification of Population; Notice of Contribution and Expenditure Limits.

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253.169. Expenditure by Certain Committees Considered Expenditure by Candidate.

253.170. Effect of Certain Political Expenditures.

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253.172. Restriction on Exceeding Expenditure Limits.

253.173. Agreement to Evade Limits Prohibited.

253.174. Misrepresentation of Opponent's Compliance with or Violation of Subchapter Prohibited.

253.175. Judicial Campaign Fairness Fund.

253.176. Civil Penalty.

SUBCHAPTER E. CIVIL LIABILITY

253.131. Liability to Candidates.

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253.133. Liability to State.

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253.158. Contribution by Spouse or Child Considered to be Contribution by Individual.

253.159. Exception to Contribution Limits.

253.160. Aggregate Limit on Contributions from and Direct Campaign Expenditures by General-Purpose Committee.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

SUBCHAPTER A. GENERAL RESTRICTIONS**Cross References**

Punishments,
Class A misdemeanor, see V.T.C.A., Penal Code § 12.21.

Third degree felony, see V.T.C.A., Penal Code § 12.34.

§ 253.001. Contribution or Expenditure in Another's Name Prohibited

(a) A person may not knowingly make or authorize a political contribution in the name of or on behalf of another unless the person discloses in writing to the recipient the name and address of the person actually making the contribution in order for the recipient to make the proper disclosure.

(b) A person may not knowingly make or authorize a political expenditure in the name of or on behalf of another unless the person discloses in writing to the person on whose behalf the expenditure is made the name and address of the person actually making the expenditure in order for the person on whose behalf the expenditure is made to make the proper disclosure.

(c) A person who violates this section commits an offense. An offense under this section is a Class A misdemeanor.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987; Acts 1997, 75th Leg., ch. 1134, § 3, eff. Sept. 1, 1997.

Historical and Statutory Notes

1997 Legislation

Section 22 of Acts 1997, 75th Leg., ch. 1134, provides:

"(a) The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. For the purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

"(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose."

Derivation:

V.T.C.A. Election Code, §§ 251.003(c), 251.009.

United States Supreme Court

Free speech and association, campaign spending limits, political party expenditures independent of candidates, see Colorado Republican Federal Cam-

paign Committee v. Federal Election Com'n, 1996, 116 S.Ct. 2309, 518 U.S. 604, 135 L.Ed.2d 795, on remand 96 F.3d 471.

§ 253.002. Unlawful Direct Campaign Expenditure

(a) A person may not knowingly make or authorize a direct campaign expenditure.

(b) This section does not apply to:

- (1) an individual making an expenditure authorized by Subchapter C;¹
- (2) a corporation or labor organization making an expenditure authorized by Subchapter D;²
- (3) a candidate making or authorizing an expenditure for the candidate's own election;
- (4) a political committee; or
- (5) a campaign treasurer or assistant campaign treasurer acting in an official capacity.

(c) A person who violates this section commits an offense. An offense under this section is a Class A misdemeanor.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987.

¹ Section 253.061 et seq.

² Section 253.091 et seq.

Historical and Statutory Notes

Derivation:

V.T.C.A. Election Code, §§ 251.003(D), 251.009.

Notes of Decisions

Validity 1

1. Validity

As applied to campaign contributors, reporting and expenditure requirements and penalties imposed under Election Code did not act as ban on independent expenditures, as would violate free speech and association rights, but merely imposed reporting requirement on direct campaign expenditures that was reasonable and minimally restrictive method of furthering First Amendment values by opening basic processes of election system to pub-

lic view. *Osterberg v. Peca* (Sup. 2000) 12 S.W.3d 31, certiorari denied 120 S.Ct. 2690, 530 U.S. 1244, 147 L.Ed.2d 962.

Election code's campaign contribution reporting requirements and penalties do not punish innocent First Amendment activity; the statute punishes only those who do not report that they have engaged in otherwise innocent First Amendment activity. (Per Abbott, J., with three Justices concurring and one Justice concurring specially.) *Osterberg v. Peca* (Sup. 2000) 12 S.W.3d 31, certiorari denied 120 S.Ct. 2690, 530 U.S. 1244, 147 L.Ed.2d 962.

§ 253.003. Unlawfully Making or Accepting Contribution

(a) A person may not knowingly make a political contribution in violation of this chapter.

(b) A person may not knowingly accept a political contribution the person knows to have been made in violation of this chapter.

(c) This section does not apply to a political contribution made or accepted in violation of Subchapter F.¹

(d) Except as provided by Subsection (e), a person who violates this section commits an offense. An offense under this section is a Class A misdemeanor.

(e) A violation of Subsection (a) or (b) is a felony of the third degree if the contribution is made in violation of Subchapter D.²

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987; Acts 1995, 74th Leg., ch. 763, § 2, eff. June 16, 1995.

¹ V.T.C.A., Election Code § 253.151 et seq.

² V.T.C.A., Election Code § 253.091 et seq.

Historical and Statutory Notes

Derivation:

V.T.C.A. Election Code, §§ 251.009, 251.010(g).

Cross References

Punishment,
Class A misdemeanor, see V.T.C.A., Penal
Code § 12.21.

Third degree felony, see V.T.C.A., Penal Code
§ 12.34.

Library References

Campaign contributions and expenditures, see
Brooks, 35 Texas Practice § 11.22.

United States Supreme Court

First amendment, restrictions on corporate elec-
tion expenditures, see Federal Election Com'n v.

Massachusetts Citizens for Life, Inc., U.S.Mass.
1986, 107 S.Ct. 616, 479 U.S. 238, 93 L.Ed.2d 539.

Notes of Decisions

Contribution in violation 2 Validity 1

1. Validity

If as state contended Election Code section which stated that person commits an offense if he "knowingly make[s] a political contribution in violation of this chapter" made it a criminal offense to knowingly making political contribution in cash to candidate and officeholder that exceeded one hundred dollars in a reporting period, Election Code section would not give reasonably clear notice for purposes of due process of law and due course of law clauses of United States and Texas Constitutions that such conduct was prohibited, although separate Election Code section prohibited candidate or officeholder from knowingly accepting such political contributions. *Fogo v. State* (Cr.App. 1992) 830 S.W.2d 592, rehearing on petition for discretionary review denied.

2. Contribution in violation

Election Code section which stated that person commits offense if he "knowingly make[s] a political contribution in violation of this chapter" did not literally criminalize political contribution-making that one knows will "cause" other persons to violate other sections of chapter where phrase "knowingly causes a violation of" or words equivalent thereto appeared nowhere in statutory section and

most legislators probably interpreted that language to criminalize only that political contribution-making that was expressly prohibited by other sections in chapter. *Fogo v. State* (Cr.App. 1992) 830 S.W.2d 592, rehearing on petition for discretionary review denied.

Statutory section which was explicitly concerned only with acceptance of political contributions did not state circumstance under which it was unlawful to make political contributions under statutory section which stated that person commits offense if he "knowingly make[s] a political contribution in violation of this chapter," legislator reading those sections in common-sense manner before voting on them would very probably have concluded that they placed potential criminal liability on those who run political campaigns and not on those who contribute to them. *Fogo v. State* (Cr.App. 1992) 830 S.W.2d 592, rehearing on petition for discretionary review denied.

Knowingly making political contribution in cash to candidate and officeholder that exceeded one hundred dollars in a reporting period was not criminal under statutory section prohibiting knowing acceptance of such political contributions via the law of parties where application of law of parties statute would lead to criminalization of conduct which Legislature apparently intended not to criminalize. *Fogo v. State* (Cr.App. 1992) 830 S.W.2d 592, rehearing on petition for discretionary review denied.

§ 253.003

Note 2

A candidate may contract with a carnival corporation for the corporation to present a carnival at the candidate's fundraiser and remit a portion of the proceeds to the candidate in exchange for the candidate's provision of land and services if such an arrangement reflects the usual and normal

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practice in the carnival industry for contracts with non-political as well as political entities. Purchase of carnival tickets would be reportable political contributions, and so could not be made by corporations or labor unions. Tex.Ethics Comm.Op. No. 143 (1993).

§ 253.004. Unlawfully Making Expenditure

(a) A person may not knowingly make or authorize a political expenditure in violation of this chapter.

(b) This section does not apply to a political expenditure made or authorized in violation of Subchapter F.¹

(c) A person who violates this section commits an offense. An offense under this section is a Class A misdemeanor.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987; Acts 1995, 74th Leg., ch. 763, § 2, eff. June 16, 1995.

¹ V.T.C.A., Election Code § 253.151 et seq.

Historical and Statutory Notes

Derivation:

V.T.C.A. Election Code, § 251.009.

Cross References

Punishment, Class A misdemeanor, see V.T.C.A., Penal Code § 12.21.

§ 253.005. Expenditure From Unlawful Contribution

(a) A person may not knowingly make or authorize a political expenditure wholly or partly from a political contribution the person knows to have been made in violation of this chapter.

(b) This section does not apply to a political expenditure that is:

(1) prohibited by Section 253.101; or

(2) made from a political contribution made in violation of Subchapter F.¹

(c) A person who violates this section commits an offense. An offense under this section is a Class A misdemeanor.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987; Acts 1995, 74th Leg., ch. 763, § 2, eff. June 16, 1995.

¹ V.T.C.A., Election Code § 253.151 et seq.

Historical and Statutory Notes

Derivation:

V.T.C.A. Election Code, §§ 251.002(g), 251.009.

[Sections 253.006 to 253.030 reserved for expansion]

SUBCHAPTER B. CANDIDATES, OFFICEHOLDERS, AND POLITICAL COMMITTEES

Cross References

Punishment, Class A misdemeanor, see V.T.C.A., Penal Code § 12.21.

United States Supreme Court

Free speech, campaign finance laws, contribution limits, see *Nixon v. Shrink Missouri government PAC*, 2000, 120 S.Ct. 897.

§ 253.031. Contribution and Expenditure Without Campaign Treasurer Prohibited

(a) A candidate may not knowingly accept a campaign contribution or make or authorize a campaign expenditure at a time when a campaign treasurer appointment for the candidate is not in effect.

(b) A political committee may not knowingly accept political contributions totaling more than \$500 or make or authorize political expenditures totaling more than \$500 at a time when a campaign treasurer appointment for the committee is not in effect.

(c) A political committee may not knowingly make or authorize a campaign contribution or campaign expenditure supporting or opposing a candidate for an office specified by Section 252.005(1) in a primary or general election unless the committee's campaign treasurer appointment has been filed not later than the 30th day before the appropriate election day.

(d) This section does not apply to a political party's county executive committee that accepts political contributions or makes political expenditures, except that:

(1) a county executive committee that accepts political contributions or makes political expenditures shall maintain the records required by Section 254.001; and

(2) a county executive committee that accepts political contributions or makes political expenditures that, in the aggregate, exceed \$5,000 in a calendar year shall file:

(A) a campaign treasurer appointment as required by Section 252.001 not later than the 15th day after the date that amount is exceeded; and

(B) the reports required by Subchapter F, Chapter 254, including in the political committee's first report all political contributions accepted and all political expenditures made before the effective date of the campaign treasurer appointment.

(e) This section does not apply to an out-of-state political committee unless the committee is subject to Chapter 252 under Section 251.005.

(f) A person who violates this section commits an offense. An offense under this section is a Class A misdemeanor.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 304, § 5.04, eff. Jan. 1, 1992; Acts 1993, 73rd Leg., ch. 531, § 2, eff. Sept. 1, 1993.

Historical and Statutory Notes

1991 Legislation

The 1991 amendment inserted subsec. (d), and designated former subsecs. (d) and (e) as subsecs. (e) and (f).

For effective date and application of the 1991 act, see Historical and Statutory Notes following § 251.001.

1993 Legislation

The 1993 amendment, in subsec. (b), substituted "political contributions totaling more than \$500"

for "a political contribution", and substituted "political expenditures totaling more than \$500" for "a political expenditure".

Derivation:

V.T.C.A. Election Code, §§ 251.002(f), 251.009.

Library References

Campaign contributions, and expenditures, see Brooks, 35 Texas Practice § 11.22.

Notes of Decisions

Filing designation of treasurer 1
Necessity for appointment 2

1. Filing designation of treasurer

Requirement of former § 251.002 (see, now, this section) for time of filing of designation of political committee's campaign treasurer was mandatory, and political committee which failed to file designation before 30th day preceding appropriate election date thereby violated this section. *Ragsdale v. Progressive Voters League* (App. 5 Dist. 1987) 743 S.W.2d 338.

A political committee may not knowingly make or authorize a campaign contribution or campaign expenditure that in the aggregate exceeds \$500 supporting or opposing a candidate for a statewide office, the state legislature, the State Board of Education, or a multi-county district office in a primary or general election unless the committee's campaign treasurer appointment has been filed not later than the 30th day before the appropriate election day. A general-purpose committee may not knowingly make or authorize political expenditures totaling more than \$500 unless the commit-

tee has filed its campaign treasurer appointment not later than the 60th day before the date the expenditure is made that causes the total expenditures to exceed \$500, and accepted political contributions from at least 10 persons. *Tex.Ethics Comm.Op. No. 161* (1993).

2. Necessity for appointment

A group that accepts contributions and makes expenditures to assist members of the legislature acting in their capacity as legislators in filing a law suit is a political committee for purposes of Title 15 of the Election Code. *Tex.Ethics Comm.Op. No. 270* (1995).

A political committee must file a campaign treasurer appointment before it accepts more than \$500 in political contributions or makes or authorizes more than \$500 in political expenditures. All political contributions to and political expenditures by a political committee count toward these thresholds, regardless of when made. Membership dues paid to support a general-purpose committee are political contributions to the committee. *Tex.Ethics Comm.Op. No. 394* (1998).

§ 253.032. Limitation on Contribution by Out-of-State Committee

(a) In a reporting period, a candidate, officeholder, or political committee may not knowingly accept political contributions totaling more than \$500 from an out-of-state political committee unless, before accepting a contribution that would cause the total to exceed \$500, the candidate, officeholder, or political committee, as applicable, receives from the out-of-state committee:

(1) a written statement, certified by an officer of the out-of-state committee, listing the full name and address of each person who contributed more than \$100 to the out-of-state committee during the 12 months immediately preceding the date of the contribution; or

(2) 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.

(b) This section does not apply to a contribution from an out-of-state political committee if the committee appointed a campaign treasurer under Chapter 252 before the contribution was made and is subject to the reporting requirements of Chapter 254.

(c) A person who violates Subsection (a) commits an offense. An offense under this section is a Class A misdemeanor.

(d) A candidate, officeholder, or political committee shall include the statement or copy required by Subsection (a) as a part of the report filed under Chapter 254 that covers the reporting period to which Subsection (a) applies.

(e) A candidate, officeholder, or political committee that accepts political contributions totaling \$500 or less from an out-of-state political committee shall include as part of the report filed under Chapter 254 that covers the reporting period in which the contribution is accepted:

(1) the same information for the out-of-state political committee required for general-purpose committees by Sections 252.002 and 252.003; or

(2) 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.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987; Acts 1995, 74th Leg., ch. 996, § 7, eff. Sept. 1, 1995.

Historical and Statutory Notes

1995 Legislation

Section 12(a) of the 1995 amendatory act provides:

"Except as provided by Subsection (b) of this section, this Act takes effect September 1, 1995, and applies to a statement, registration, or report

required to be filed with the Texas Ethics Commission on or after that date."

Derivation:

V.T.C.A. Election Code, §§ 251.009, 251.011(h) (part).

Notes of Decisions

Copy of statement of organization 1

1. Copy of statement of organization

A Texas candidate, officeholder, or political committee that receives contributions that exceed \$500 in a reporting period must obtain only one certified copy of the out-of-state political committee's statement of organization filed with the Federal Elec-

tion Commission during that reporting period. A Texas candidate, officeholder, or political committee must obtain a new certified copy of the out-of-state political committee's statement of organization filed with the FEC for each reporting period in which the Texas candidate, officeholder, or political committee receives more than \$500 in contributions from the out-of-state committee. Tex.Ethics Comm.Op. No. 166 (1993).

§ 253.033. Cash Contributions Exceeding \$100 Prohibited

(a) A candidate, officeholder, or specific-purpose committee may not knowingly accept from a contributor in a reporting period political contributions in cash that in the aggregate exceed \$100.

(b) A person who violates this section commits an offense. An offense under this section is a Class A misdemeanor.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987.

Historical and Statutory Notes

Derivation:

V.T.C.A. Election Code, §§ 251.004, 251.009.

Library References

Accepting contribution from corporation, complaints, informations and indictments, see McCormick et al., 7 Texas Practice § 34.05 (10th ed.).

Campaign contributions and expenditures, see Brooks, 35 Texas Practice § 11.22.

Notes of Decisions

Construction with other law 1

1. Construction with other law

Knowingly making political contribution in cash to candidate and officeholder that exceeded one hundred dollars in a reporting period was not

criminal under statutory section prohibiting knowing acceptance of such political contributions via the law of parties where application of law of parties statute would lead to criminalization of conduct which Legislature apparently intended not to criminalize. Fogo v. State (Cr.App. 1992) 830 S.W.2d 592, rehearing on petition for discretionary review denied.

§ 253.034. Restrictions on Contributions During Regular Legislative Session

(a) During the period beginning on the 30th day before the date a regular legislative session convenes and continuing through the day of final adjournment, a person may not knowingly make a political contribution to:

(1) a statewide officeholder;

(2) a member of the legislature; or

(3) a specific-purpose committee for supporting, opposing, or assisting a statewide officeholder or member of the legislature.

(b) A statewide officeholder, a member of the legislature, or a specific-purpose committee for supporting, opposing, or assisting a statewide officeholder or member of the legislature may not knowingly accept a political contribution, and shall refuse a political contribution that is received, during the period prescribed by Subsection (a). A political contribution that is received and refused during that period shall be returned to the contributor not later than the 30th day after the date of receipt. A contribution made by mail is not considered received during that period if it was placed with postage prepaid and properly addressed in the United States mail before the beginning of the period. The date indicated by the post office cancellation mark is considered to be the date the contribution was placed in the mail unless proven otherwise.

(c) This section does not apply to a political contribution that was made and accepted with the intent that it be used:

(1) in an election held or ordered during the period prescribed by Subsection (a) in which the person accepting the contribution is a candidate if the contribution was made after the person appointed a campaign treasurer with the appropriate authority and before the person was sworn in for that office;

(2) to defray expenses incurred in connection with an election contest; or

(3) by a person who holds a state office or a member of the legislature if the person or member was defeated at the general election held immediately before the session is convened or by a specific-purpose political committee that supports or assists only that person or member.

(d) This section does not apply to a political contribution made to or accepted by a holder of an office to which Subchapter F applies.

(e) A person who violates this section commits an offense. An offense under this section is a Class A misdemeanor.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 304, § 5.05, eff. Jan. 1, 1992; Acts 1997, 75th Leg., ch. 1134, § 4, eff. Sept. 1, 1997.

Historical and Statutory Notes

1991 Legislation

The 1991 amendment, in subsec. (b), inserted “, and shall refuse a political contribution that is received” in the first sentence, and added the second to fourth sentences.

For effective date and application of the 1991 act, see Historical and Statutory Notes following § 251.001.

1997 Legislation

For application provision of Acts 1997, 75th Leg., ch. 1134, see notes following V.T.C.A., Election Code § 253.001.

Derivation:

V.T.C.A. Election Code, §§ 251.005, 251.009.

Notes of Decisions

- Construction and application 2**
- Contributions outside moratorium period 3**
- Officeholder contributions, generally 1**

1. Officeholder contributions, generally

A commercial sponsor who provided funding for a television program for a state representative with the intent that the state representative use the time to explain his position on legislative matters would be making an officeholder contribution. Because officeholder contributions from corporations and certain other entities are generally prohibited, those entities could not sponsor such a program. *Tex.Ethics Comm.Op. No. 144 (1993).*

2. Construction and application

A member of the State Board of Education is not required to comply with Election Code § 253.034, which places a moratorium on certain

political contributions before and during the regular legislative session. *Tex.Ethics Comm.Op. No. 234 (1994).*

The moratorium on political contributions during the legislative session does not apply to state district judges. *Tex.Ethics Comm.Op. No. 253 (1995).*

Justices and justices-elect of the Supreme Court and the Court of Criminal Appeals who had an *opponent in the November 1996 general election* may accept political contributions in accordance with the Judicial Campaign Fairness Act until March 5, 1997. *Tex.Ethics Comm.Op. No. 351 (1996).*

3. Contributions outside moratorium period

As long as a person is subject to Election Code § 253.034 accepts and receive a political contribution in the form of office space before the begin-

ning of the moratorium on political contributions set out in § 253.034, the person may continue to use the office space during the period covered by the moratorium. *Tex.Ethics Comm.Op. No. 239 (1994)*.

A member of the House of Representatives who intends to run for the Senate in a special election that has not yet been ordered but which will almost certainly be ordered and held during the 1997 Legislative Session may rely on the exception set out in § 253.034(c)(1) of the Election Code. *Tex.Ethics Comm.Op. No. 354 (1996)*.

§ 253.0341. Restrictions on Contributions to Legislative Caucuses During Regular Legislative Session

(a) During the period beginning on the 30th day before the date a regular legislative session convenes and continuing through the day of final adjournment, a person not a member of the caucus may not knowingly make a contribution to a legislative caucus.

(b) A legislative caucus may not knowingly accept from a nonmember a contribution, and shall refuse a contribution from a nonmember that is received, during the period prescribed by Subsection (a). A contribution that is received and refused during that period shall be returned to the contributor not later than the 30th day after the date of receipt. A contribution made by mail is not considered received during that period if it was placed with postage prepaid and properly addressed in the United States mail before the beginning of the period. The date indicated by the post office cancellation mark is considered to be the date the contribution was placed in the mail unless proven otherwise.

(c) A person who violates this section commits an offense. An offense under this section is a Class A misdemeanor.

(d) A person who knowingly makes or accepts a contribution in violation of this section is liable for damages to the state in the amount of triple the value of the unlawful contribution.

(e) In this section, "legislative caucus" means an organization that is composed exclusively of members of the legislature, that elects or appoints officers and recognizes identified legislators as members of the organization, and that exists for research and other support of policy development and interests that the membership hold in common. The term includes an entity established by or for a legislative caucus to conduct research, education, or any other caucus activity. An organization whose only nonlegislator members are the lieutenant governor or the governor remains a "legislative caucus" for purposes of this section.

Added by Acts 1995, 74th Leg., ch. 43, § 1, eff. Aug. 28, 1995. Amended by Acts 1997, 75th Leg., ch. 1134, § 5, eff. Sept. 1, 1997.

Cross References

Punishment, Class A misdemeanor, see V.T.C.A., Penal Code § 12.21.

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2. Continued services

A legislative caucus must refuse contributions of personal services from nonmembers during the moratorium period imposed by Election Code § 253.0341 even if the agreement to provide the services was entered into before the start of the moratorium period. *Tex.Ethics Comm.Op. No. 357 (1997)*.

1. In general

A legislative caucus is not prohibited from accepting meeting facilities, food, transportation, and lodging as an in-kind contribution from a university as long as they are not accepted during a regular legislative session or during the 30-day period before a regular legislative session. Although individual members of the legislature are subject to restrictions on the acceptance of benefits, they may accept food, transportation, and lodging as a guest of the caucus as long as they comply with any applicable reporting requirements. *Tex.Ethics Comm.Op. No. 304 (1996)*.

3. Private research groups

An entity established by or for a legislative caucus to conduct research or education is itself a legislative caucus if the research or education is a "caucus activity." A "caucus activity" is an activity that supports the policy development and interests that the members of the establishing caucus hold in common. *Tex.Ethics Comm.Op. No. 384 (1997)*.

§ 253.035. Restrictions on Personal Use of Contributions

(a) A person who accepts a political contribution as a candidate or officeholder may not convert the contribution to personal use.

(b) A specific-purpose committee that accepts a political contribution may not convert the contribution to the personal use of a candidate, officeholder, or former candidate or officeholder.

(c) The prohibitions prescribed by Subsections (a) and (b) include the personal use of an asset purchased with the contribution and the personal use of any interest and other income earned on the contribution.

(d) In this section, "personal use" means 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. The term does not include:

(1) payments made to defray ordinary and necessary expenses incurred in connection with activities as a candidate or in connection with the performance of duties or activities as a public officeholder, including payment of rent, utility, and other reasonable housing or household expenses incurred in maintaining a residence in Travis County by members of the legislature who do not ordinarily reside in Travis County, but excluding payments prohibited under Section 253.038; or

(2) payments of federal income taxes due on interest and other income earned on political contributions.

(e) Subsection (a) applies only to political contributions accepted on or after September 1, 1983. Subsection (b) applies only to political contributions accepted on or after September 1, 1987.

(f) A person who converts a political contribution to the person's personal use in violation of this section is civilly liable to the state for an amount equal to the amount of the converted contribution plus reasonable court costs.

(g) A specific-purpose committee that converts a political contribution to the personal use of a candidate, officeholder, or former candidate or officeholder in violation of this section is civilly liable to the state for an amount equal to the amount of the converted contribution plus reasonable court costs.

(h) Except as provided by Section 253.0351 or 253.042, a candidate or officeholder who makes political expenditures from the candidate's or officeholder's personal funds may reimburse those personal funds from political contributions in the amount of those expenditures only if:

(1) the expenditures from personal funds were fully reported as political expenditures, including the payees, dates, purposes, and amounts of the expenditures, in the report required to be filed under this title that covers the period in which the expenditures from personal funds were made; and

(2) the report on which the expenditures from personal funds are disclosed clearly designates those expenditures as having been made from the person's personal funds and that the expenditures are subject to reimbursement.

(i) "Personal use" does not include the use of contributions for:

(1) defending a criminal action or prosecuting or defending a civil action brought by or against the person in the person's status as a candidate or officeholder; or

(2) participating in an election contest or participating in a civil action to determine a person's eligibility to be a candidate for, or elected or appointed to, a public office in this state.

(j), (k) Repealed by Acts 1991, 72nd Leg., ch. 304, § 5.20, eff. Jan. 1, 1992.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 304, § 5.06, eff. Jan. 1, 1992; Acts 1995, 74th Leg., ch. 996, § 9, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 864, § 240, eff. Sept. 1, 1997.

Historical and Statutory Notes

1991 Legislation

The 1991 amendment, in subd. (d)(1), deleted "interest" following "rent," and inserted ", but excluding payments prohibited under Section 253.038"; in subsec. (h), in the introductory fragment, added "Except as provided by Section 253.042", inserted "political", deleted "for campaign or officeholder purposes", and inserted "only if:", and inserted subds. (1) and (2); and in subsec. (i) substituted "Personal use" for "Except as provided by Subsection (j), personal use" in the introductory fragment, and in subd. (1) inserted "action", "prosecuting or defending a" and "by or".

The 1991 amendment repealed subsecs. (j) and (k), which read:

"(j) If the candidate or officeholder defending the criminal action is finally convicted or if the candidate or officeholder does not finally prevail in defending the civil action, excluding a contest or action described by Subsection (i)(2), the candidate or officeholder shall reimburse his political funds in the amount of expenditures made in defending the action. Political funds expended in participating in a contest or action described by Subsection (i)(2) or expended prior to settlement of a civil action brought against the person in his status as a candidate or officeholder are not required to be reimbursed under this subsection. The candidate or officeholder shall reimburse his political funds in the total amount of expenditures made in de-

fending the action not later than two years after the date on which final judgment is rendered. A candidate or officeholder who fails to make the reimbursement as required by this subsection is considered to have converted contributions to his personal use.

"(k) A candidate or officeholder or former candidate or officeholder shall report each reimbursement in the report required to be filed under this title that covers the period in which the reimbursement is made. A former candidate or officeholder who has not completed the reimbursement required by this section is considered to have unexpended political contributions for purposes of Subchapter H, Chapter 254."

For effective date and application of the 1991 act, see Historical and Statutory Notes following § 251.001.

1995 Legislation

Section 12(a) of the 1995 amendatory act provides:

"Except as provided by Subsection (b) of this section, this Act takes effect September 1, 1995, and applies to a statement, registration, or report required to be filed with the Texas Ethics Commission on or after that date."

Derivation:

V.T.C.A. Election Code, § 251.007.

Cross References

Reporting of expenditures made from officeholder's personal funds, see V.T.C.A., Election Code § 254.092.

Library References

Campaign contributions and expenditures, see Brooks, 35 Texas Practice § 11.22.

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1. Official use

A sheriff may use his campaign or officeholder contributions to pay or reimburse cash shortages in his official account; the use of political funds for this purpose would not violate the personal use restriction of this section. Op.Atty.Gen.1988, No. JM-856.

A judge may use political contributions to purchase electronic equipment for official use in the judge's courtroom or chambers but may not convert the asset to personal use. Tex.Ethics Comm. Op. No. 25 (1992).

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Note 1

As long as a payment is not given as consideration for the state representative's decision, opinion, recommendation, vote, or other exercise of discretion as a public servant, the state representative may accept an officeholder contribution or a campaign contribution in the amount of the cost of the ticket. *Tex.Ethics Comm.Op. No. 80 (1992)*.

The use of a personal asset for political purposes is not required to be reported under Title 15. A candidate may reimburse his personal funds from political contributions for the use of personal assets for political purposes. *Tex.Ethics Comm.Op. No. 116 (1993)*.

A member of the legislature may not use the work time of state employees to prepare and mail Christmas cards to the legislator's constituents. A member of the legislature may use political contributions to purchase, prepare, and mail Christmas cards. *Tex.Ethics Comm.Op. No. 190 (1994)*.

It is permissible to donate surplus funds from a campaign for speaker of the House of Representatives to a recognized tax-exempt charitable organization. *Tex.Ethics Comm.Op. No. 286 (1995)*.

1.6. Intent

Whether a member of the Texas Legislature may use political contributions to pay expenses in connection with a swearing-in ceremony for a member of the United States Congress depends on the intent with which the expenditures are made. *Tex.Ethics Comm.Op. No. 356 (1997)*.

2. Moving expenses

Under former V.A.T.S. Election Code, art. 14.03d(b) (renumbered this section), a member of the legislature, who did not ordinarily reside in Travis County, could use political contributions to pay for moving expenses to Travis County in order to attend a regular or special session of the Texas Legislature. *Election Law Opinion No. MAM-3 (1985)*.

3. Staff expenses

As part of an employment contract or agreement, a member of the legislature might have paid reasonable housing expenses of a staff person during the legislative session without violating art. 14.03d of this code (renumbered; now, this section). *Election Law Opinion No. MAM-5 (1985)*.

4. Legal expenses

Under former § 251.007 (now this section), an officeholder could use political contributions to defray ordinary and necessary legal expenses he incurred in successfully defending criminal charges when the complaint was filed against him in his capacity as an officeholder and as a direct result of performing an activity of office. *Election Law Opinion No. MAM-7 (1986)*.

A member of the legislature may use political contributions to defray ordinary and necessary legal expenses resulting from a libel suit filed against the member, when the cause of action arose as a direct consequence of performing an activity of office. *Election Law Opinion No. MAM-6 (1985)*.

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A candidate or office holder may use campaign contributions to pay legal expenses incurred in defending a lawsuit brought to collect on a campaign loan if the loan was made to the candidate or office holder in his status as a candidate or office holder. *Tex.Ethics Comm.Op. No. 105 (1992)*.

If a judge determines in good faith that a groundless lawsuit has been filed against him solely because of his status as a judge, the judge may use political contributions to pay the expenses of defending the lawsuit. *Tex.Ethics Comm.Op. No. 276 (1995)*.

An officeholder may use political contributions to pay legal expenses incurred in connection with federal and state investigations of the officeholder for public corruption. *Tex.Ethics Comm.Op. No. 310 (1996)*.

Contributions to a legislator for a legal defense fund to cover the expenses of defending two lawsuits brought against the legislator in a private, professional capacity would not be officeholder contributions. Further, the legislator may not use political contributions on hand to pay the expenses of defending the lawsuits. The provision of legal services at no charge would be a "benefit" for purposes of Chapter 36 of the Penal Code. *Tex.Ethics Comm.Op. No. 363 (1997)*.

4.5. Political expenditures

A person may use political contributions to defend a grievance filed before the State Bar if the grievance is in regard to the person's conduct as a candidate. *Tex.Ethics Comm.Op. No. 222 (1994)*.

An individual may use political contributions to pay the expenses in connection with a sworn complaint filed with the Ethics Commission alleging violation of Title 15 of the Election Code. *Tex.Ethics Comm.Op. No. 219 (1994)*.

It is permissible for an officeholder to use political contributions to purchase, repair, and mail congratulatory letters to parents upon the birth of a child and certificates to students upon graduation from high school or college. *Tex.Ethics Comm.Op. No. 209 (1994)*.

Payment of a fine for filing a late report with the Texas Ethics Commission is a political expenditure. *Tex.Ethics Comm.Op. No. 206 (1994)*.

A member of the legislature who does not ordinarily reside in Travis County may use political contributions to lease or purchase furniture for a residence in Travis County. *Tex.Ethics Comm.Op. No. 237 (1994)*.

5. Taxation

An officeholder could report to the Internal Revenue Service interest accrued on political contributions as personal income without violating former V.A.T.S. Election Code, art. 14.03d (now this section) if the officeholder did not actually use that interest for personal or family purposes and he/she did not receive a personal or family benefit by choosing that method of reporting to the Internal Revenue Service. *Election Law Opinion No. MAM-4 (1985)*.

The use of contributions to pay any ordinary and necessary expenses incurred as a result of legally accepting and maintaining political contributions is not a prohibited personal use under former V.A.T.S. Election Code, art. 14.03d (now this section); therefore, an officeholder may use contributions to pay the necessary expenses involved in preparing and filing federal tax returns that result from the acceptance and maintenance of political contributions. Election Law Opinion No. MAM-4 (1985).

Under former V.A.T.S. Election Code, art. 14.03d (now this section), an officeholder could use contributions to pay the federal taxes incurred as a result of maintaining the contributions in a separate, interest-bearing bank account. Election Law Opinion No. MAM-4 (1985).

5.5. Investments

The only limit Title 15 places on a candidate's or office holder's investment of political contributions is that an investment may not constitute a conversion of a political contribution to the personal use of the candidate nor office holder. Tex.Ethics Comm.Op. No. 224 (1994).

6. Partial personal use

Even if language of Texas Election Code intended to create trust for political contributions, to avoid Chapter 7 debtor's interest in political contributions from becoming property of Chapter 7 estate, court had to further find that trust was in nature of spendthrift trust, or contained restriction on transfer of beneficial interest of debtor that was enforceable under Texas law. In re Denton, Bkrcty.W.D.Tex.1994, 169 B.R. 608, affirmed 169 B.R. 612.

Statutory restrictions contained in Texas Election Code relative to campaign funds did not convert campaign fund account into "trust fund," and thus, provisions of Bankruptcy Code preserving restrictions on transfer of spendthrift trust did not apply to campaign fund accounts of Chapter 7 debtor, and accounts were "property of the bankruptcy estate"; although Election Code provided for penalties where use was made of funds for personal expenses, funds were nevertheless subject to being so used, whereas beneficiary of valid spendthrift trust cannot reach assets of trust unless and until trustee distributes them. In re Denton, Bkrcty.W.D.Tex.1994, 169 B.R. 608, affirmed 169 B.R. 612.

An asset purchased in whole or in part with political contributions is subject in its entirety to the restrictions set out in Title 15 of the Election Code, and a candidate or officeholder may not remove a portion of the asset from those restrictions by paying for a portion of the asset with personal funds. Tex.Ethics Comm.Op. No. 13 (1992).

Person who entered into a car lease before June 4, 1992, with the intent "to pro-rate the cost of the lease and the operating costs between campaign and personal on a periodic basis" may, until the lease agreement expires, continue to use the car

for both campaign and personal use and properly apportion lease payments and operating costs between political contributions and personal funds. Tex.Ethics Comm.Op. No. 50 (1992).

It is not illegal for an office holder or candidate to purchase a car with political funds for the purpose of making campaign appearances in parades nor is it illegal to use political funds to maintain and insure a car used for such purposes. The car may not be used in a way that primarily furthers individual or family purposes not connected with the performance of duties or activities as a candidate for or a holder of a public office. Tex.Ethics Comm.Op. No. 68 (1992).

Officeholder may use political contributions to pay the expenses of operating and maintaining his personal airplane for officeholder purposes, and may prorate expenses between officeholder use and personal use. Tex.Ethics Comm.Op. No. 129 (1993).

7. Personal use

It is permissible for a member of the legislature who does not ordinarily reside in Travis County to use political contributions to pay utility bills for a house in Austin that the member owns. Tex.Ethics Comm.Op. No. 76 (1992).

A member of the legislature may not use political contributions to pay for business and personal phone calls not involving state business. Tex.Ethics Comm.Op. No. 78 (1992).

Payment to a state representative personally in the amount of an airline ticket paid for out of political funds would, in the circumstances described, be prohibited. Tex.Ethics Comm.Op. No. 80 (1992).

Legislators may not use political contributions to pay laundry and dry cleaning expenses incurred in Austin. Tex.Ethics Comm.Op. No. 104 (1992).

A candidate may not convert assets purchased with political contributions to personal use. An item is not converted to personal use if the candidate reimburses his political funds on the basis of the reasonable value of any personal use. Tex.Ethics Comm.Op. No. 116 (1993).

An appellate judge may not use political contributions to pay the expenses of maintaining a residence in the city in which the court sits or of commuting between his home city and the city where the court sits, but a judge may use political contributions to pay the expenses of moving from his home city to the city where the court sits. Tex.Ethics Comm.Op. No. 133 (1993).

An officeholder may use political contributions left over from a campaign to make a donation to a tax-exempt, nonprofit organization serving physically, mentally, and developmentally challenged citizens without violating the prohibition on conversion of political contributions to personal use. Tex.Ethics Comm.Op. No. 149 (1993).

Political contributions accepted before September 1, 1983, are not subject to the prohibition on personal use of political contributions. Tex.Ethics Comm.Op. No. 151 (1993).

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Note 7

A state representative whose district has a large Hispanic population may use political contributions to pay for Spanish lessons in order to communicate with his or her constituency. Such expenditures would not constitute a prohibited personal use of political contributions under section 253.035 of the Election Code. *Tex.Ethics Comm.Op. No. 157 (1993)*.

Surplus funds of a deceased officeholder may be contributed to a candidate as long as disposition of the funds is permissible under any applicable probate laws. *Tex.Ethics Comm.Op. No. 169 (1993)*.

An unrestricted donation of political contributions to the state treasury is not a conversion of those political contributions to personal use for purposes of Election Code § 253.035. *Tex.Ethics Comm.Op. No. 244 (1995)*.

Judges and judicial candidates may use political contributions to pay state bar dues if the judicial office they hold or seek requires them to be licensed to practice law in Texas. *Tex.Ethics Comm.Op. No. 245 (1995)*.

Election Code § 253.038, which prohibits the use of political contributions to make payments on a note for the purchase of real property, does not apply to payments for property purchased before Jan. 1, 1992. If political contributions are used to pay part of the purchase price of an asset, a proportional amount of any income from the asset is subject to the prohibition on personal use in Election Code § 253.035. *Tex.Ethics Comm.Op. No. 248 (1995)*.

Holiday greeting cards sent by an officeholder and paid for with political contributions are not required to contain a political advertising disclosure as long as the name and address of the officeholder sending the cards appear on the card itself or on the envelope. *Tex.Ethics Comm.Op. No. 289 (1995)*.

Use of political contributions to purchase items to decorate an officeholder's Capitol office is a use connected with officeholder activities and is therefore not a violation of the personal use prohibition of Election Code § 253.035. Items purchased with political contributions may not be converted to personal use at the end of an officeholder's tenure in office. *Tex.Ethics Comm.Op. No. 296 (1995)*.

A legislator's use of political contributions to make a rental payment to his spouse for the use of her separate property does not constitute a payment to purchase real property and does not violate Election Code § 253.038. Nor is such a payment a conversion to personal use as long as the payment does not exceed the fair market value of the use of the property. *Tex.Ethics Comm.Op. No. 319 (1996)*.

A candidate or officeholder may not use political contributions to pay for family recreation or entertainment. *Tex.Ethics Comm.Op. No. 405*.

8. Spouse's expenses

A candidate may use political contributions to pay the travel expenses of his or her spouse if the spouse is campaigning for a candidate. An office-

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holder may use political contributions to pay for his or her spouse's travel if the spouse's travel is in connection with the performance of duties or responsibilities of the officeholder. *Tex.Ethics Comm.Op. No. 111 (1992)*.

A legislator may not use political contributions to pay expenses associated with the attendance of the legislator's spouse at Legislative Ladies functions. *Tex.Ethics Comm.Op. No. 378 (1997)*.

8.1. Legislative conferences

A member of the legislature may not use political contributions to pay for his or her spouse to attend a legislative conference if the spouse is attending merely to participate in social activities provided for spouses. A member of the legislature may use political contributions to pay for his or her spouse to attend a legislative conference if the spouse attends the conference to participate in the substantive programs offered at the conference in order to assist the legislator in the performance of legislative duties or activities. *Tex.Ethics Comm. Op. No. 378 (1997)*.

9. Reimbursement of personal funds

A state representative may use political contributions to reimburse himself for payments from personal funds on a condominium that the state representative purchased in 1991. Reimbursements may be made for payments made after January 1, 1992, only if the state representative complied with the reporting requirements set out in Election Code § 253.035(h). *Tex.Ethics Comm. Op. No. 146 (1993)*.

Although the technically correct way to report the use of personal funds is to disclose expenditures made from those funds on Schedule G of Form C/OH, a candidate who has reported his use of personal funds for political expenditures as loans to his campaign is not prohibited from reimbursing himself from political contributions in the amount of the personal funds spent for political purposes. *Tex.Ethics Comm.Op. No. 258 (1995)*.

An officeholder may not use a state plane for purposes other than those authorized by Government Code § 2205.036 even if the officeholder pays for such use. The basis for reimbursement for personal use of an airplane paid for with campaign funds is the reasonable value of the personal use. *Tex.Ethics Comm.Op. No. 269 (1995)*.

9.1. Interest

A candidate or officeholder may use political contributions to pay interest to himself or herself at a commercially reasonable rate in connection with political expenditures made from the candidate's or officeholder's personal funds if the candidate or officeholder properly reports the political expenditures from personal funds and indicates on the report that he or she intends to pay reimbursement with interest. The report must also set out the rate at which the candidate or officeholder will pay himself or herself interest. *Tex.Ethics Comm. Op. No. 375 (1997)*.

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Note 13

9.5. Reimbursement by state

If an officeholder seeks and obtains state reimbursement for a use of a car purchased with political contributions, the money paid to the officeholder as reimbursement for the use of the car must be paid by the officeholder into the officeholder's political fund. *Tex.Ethics Comm.Op. No. 204 (1994).*

10. Officeholder expenses

An elected official may use political contributions to reimburse his personal funds for officeholder expenses if the elected official reported the expenditures in accordance with Election Code § 253.035(h). *Tex.Ethics Comm.Op. No. 195 (1994).*

A legislator may use political contributions to pay reasonable household expenses in Austin. The term "reasonable household expenses" includes rent and phone service for an Austin residence but does not include all meals in Austin. A legislator may use political contributions to pay for expenses such as gas, parking, tips, tolls, or a mobile phone that are incurred in connection with state business. *Tex.Ethics Comm.Op. No. 241 (1995).*

11. Duties or activities of officeholder

A retiring judge may use political contributions to pay for a portrait of himself to be hung in the county courthouse. *Tex.Ethics Comm.Op. No. 199 (1994).*

A judge may use political contributions to pay expenses incurred in connection with a course of study related to the judge's duties or activities of office. *Tex.Ethics Comm.Op. No. 267 (1995).*

Nothing in Title 15 of the Election Code prohibits the use of political contributions to supplement the salaries of state employees. A salary supplement paid by a legislator to state employees who work for the officeholder is permissible under Penal Code § 36.10(a)(2). *Tex.Ethics Comm.Op. No. 254 (1995).*

A judge may use political contributions to pay expenses incurred in connection with a course of study related to the judge's duties or activities of office. *Tex.Ethics Comm.Op. No. 267 (1995).*

An officeholder may use political contributions to pay for damages to property caused in the discharge of the officeholder's official duties. *Tex.Ethics Comm.Op. No. 313 (1996).*

Generally, Texas Election Code does not prohibit the use of campaign contributions received in connection with one office to campaign for another office. However, there are certain restrictions on using contributions accepted in connection with a nonjudicial office to make campaign expenditures in connection with a judicial office and on using contributions accepted in connection with a judicial office to make campaign expenditures in connection with a nonjudicial office. Also, federal law may restrict the use of contributions accepted in connection with a state or local office to make campaign expenditures in connection with a campaign for federal office. *Tex.Ethics Comm.Op. No. 317 (1996).*

12. Transportation

A candidate or officeholder may use political contributions to purchase an automobile to be used for campaign or officeholder purposes. *Tex.Ethics Comm.Op. No. 13 (1992).*

It is not illegal for an office holder or candidate to purchase a car with political funds for the purpose of making campaign appearances in parades nor is it illegal to use political funds to maintain and insure a car used for such purposes. The car may not be used in a way that primarily furthers individual or family purposes not connected with the performance of duties or activities as a candidate for or a holder of a public office. *Tex.Ethics Comm.Op. No. 68 (1992).*

For purposes of Election Code § 251.008, expenses "in connection with" a speaker's appearance before a club include expenditures for meals, a meeting room, insurance for the meeting, decorations, food, advertising, and travel expenses. If the speaker makes use of the travel provided by the club to engage in other campaign activity, a reasonably apportioned amount or the travel expenditures would be a campaign contribution to the candidate. *Tex.Ethics Comm.Op. No. 189 (1994).*

The Election Code does not permit the use of political contributions to pay for the Governor's travel or for the travel of members of the Governor's immediate family if the primary purpose of the trip is personal. If the Governor or a member of his family uses a private airplane for personal travel because of the undue difficulties of commercial air travel that are attributable to state security measures, the costs of using a private plane that exceed the price of commercial airfare are attributable to activities in connection with the office of the Governor therefore are properly payable from political contributions. *Tex.Ethics Comm.Op. No. 297 (1996).*

If a candidate or officeholder uses a personal car for political purposes, reporting is required only if and when the candidate or officeholder pays himself reimbursement from the political contributions. *Tex.Ethics Comm.Op. No. 347 (1996).*

A newly-elected or re-elected legislator may use political contributions to pay travel expenses for his or her spouse to attend the opening ceremony of the legislature. *Tex.Ethics Comm.Op. No. 378 (1997).*

13. Accounts and accounting

Title 15 of the Election Code does not require that political contributions be kept in an account separate from other funds, or even that political contributions be kept in an account at all. If a candidate or office holder maintains more than one account, a transfer of political contributions from one of those accounts of another is not an expenditure, nor does the transfer trigger any reporting requirements. Similarly, the withdrawal of cash from one of those accounts is not, by itself, an expenditure, nor does the withdrawal itself trigger any reporting requirements. *Tex.Ethics Comm. Op. No. 230 (1994).*

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Note 14

14. Payees

Assertions that officeholder failed to include names of payees in officeholder reports required to be filed by Election Code when officeholder made political expenditures from his personal funds and sought reimbursement from political contributions but officeholder swore that all information in reports was true and correct and that his reports included everything which Election Code required him to report sufficiently alleged perjury. *State v. Eversole* (App. 14 Dist. 1994) 889 S.W.2d 418, rehearing overruled, petition for discretionary review refused 899 S.W.2d 204, rehearing on petition for discretionary review denied.

The term "payee," in Election Code section permitting officeholder who makes political expenditures from personal funds to reimburse his personal funds from political contributions if expenditures from personal funds were fully reported as political expenditures, including names of payees, was not

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unconstitutionally vague and ambiguous; plain meaning of statute made it self-evident that officeholder could, if he made political expenditure from his personal funds, reimburse himself from funds obtained through political contributions. *State v. Eversole* (App. 14 Dist. 1994) 889 S.W.2d 418, rehearing overruled, petition for discretionary review refused 899 S.W.2d 204, rehearing on petition for discretionary review denied.

15. Civil liability

Election Code did not provide opposing candidate with remedy for successful candidate's alleged conversion of campaign funds to personal use, and instead, candidate who converted contributions to personal use in violation of Election Code was civilly liable to state. *Howell v. Mauzy* (App. 3 Dist. 1994) 899 S.W.2d 690, writ denied, rehearing of writ of error overruled.

§ 253.0351. Loans From Personal Funds

(a) A candidate or officeholder who makes political expenditures from the candidate's or officeholder's personal funds may report the amount expended as a loan and may reimburse those personal funds from political contributions in the amount of the reported loan.

(b) Section 253.035(h) applies if the person does not report an amount as a loan as authorized by Subsection (a).

Added by Acts 1995, 74th Leg., ch. 996, § 8, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 864, § 241, eff. Sept. 1, 1997.

Historical and Statutory Notes

1995 Legislation

Section 12(a) of the 1995 Act provides:

"Except as provided by Subsection (b) of this section, this Act takes effect September 1, 1995,

and applies to a statement, registration, or report required to be filed with the Texas Ethics Commission on or after that date."

Notes of Decisions

Interest 1

1. Interest

A candidate or officeholder may use political contributions to pay interest to himself or herself at a commercially reasonable rate in connection with political expenditures made from the candi-

date's or officeholder's personal funds if the candidate or officeholder properly reports the political expenditures from personal funds and indicates on the report that he or she intends to pay reimbursement with interest. *The report must also set out the rate at which the candidate or officeholder will pay himself or herself interest.* Tex.Ethics Comm. Op. No. 375 (1997).

§ 253.036. Officeholder Contributions Used in Connection With Campaign

An officeholder who lawfully accepts officeholder contributions may use those contributions in connection with the officeholder's campaign for elective office after appointing a campaign treasurer.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987.

§ 253.037. Restrictions on Contribution or Expenditure by General-Purpose Committee

(a) A general-purpose committee may not knowingly make or authorize a political contribution or political expenditure unless the committee has:

(1) filed its campaign treasurer appointment not later than the 60th day before the date the contribution or expenditure is made; and

(2) accepted political contributions from at least 10 persons.

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(b) A general-purpose committee may not knowingly make a political contribution to another general-purpose committee unless the other committee is listed in the campaign treasurer appointment of the contributor committee.

(c) Subsection (a) does not apply to a political party's county executive committee that is complying with Section 253.031 or to a general-purpose committee that accepts contributions from a multicandidate political committee (as defined by the Federal Election Campaign Act)¹ that is registered with the Federal Election Commission, provided that the general-purpose committee is in compliance with Section 253.032.

(d) A person who violates this section commits an offense. An offense under this section is a Class A misdemeanor.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 531, § 1, eff. Sept. 1, 1993.

¹ 2 U.S.C.A. § 431 et seq.

Historical and Statutory Notes

1993 Legislation

The 1993 amendment, in subsec. (c), inserted "to a political party's county executive committee that is complying with Section 253.031 or".

Notes of Decisions

Authorized contributions or expenditures 2
Construction and application 1
Contribution to other committee 3
Waiting period 4

1. Construction and application

Before a county political party organization could legally engage in activities that constituted acceptance of a "contribution" or making of an "expenditure", as those terms are defined in statute, the organization was required to file as a "political committee", and in most instances, the activities normally associated with a county political party would have corresponded to the definition under subsec. (Q) of V.A.T.S. Election Code, art. 14.01 [transferred; now, subd. (15) of § 251.001], of a "general purpose political committee" and required filings under this chapter with the secretary of state. Election Law Opinion No. DAD-71 (1983).

2. Authorized contributions or expenditures

A political committee may not knowingly make or authorize a campaign contribution or campaign expenditure that in the aggregate exceeds \$500 supporting or opposing a candidate for a statewide office, the state legislature, the State Board of Education, or a multi-county district office in a primary or general election unless the committee's campaign treasurer appointment has been filed not later than the 30th day before the appropriate election day. A general-purpose committee may not knowingly make or authorize political expendi-

tures totaling more than \$500 unless the committee has filed its campaign treasurer appointment not later than the 60th day before the date the expenditure is made that causes the total expenditures to exceed \$500, and accepted political contributions from at least 10 persons. Tex.Ethics Comm.Op. No. 161 (1993).

3. Contribution to other committee

If an out-of-state employee group is a "general-purpose committee" under the Texas Election Code, then a Texas general-purpose committee is required to include the name and address of the out-of-state employee group in its appointment of campaign treasurer as a "general-purpose committee" to whom the committee intends to make political contributions" before the Texas committee may make a contribution to the out-of-state committee. Tex.Ethics Comm.Op. No. 65 (1992).

4. Waiting period

General-purpose committee expenditures related to political fundraising are subject to the 60-day waiting period of Election Code § 253.037. Costs associated with the production and dissemination of a brochure discussing the nature of a general-purpose committee and its political concerns, to be used for educational and fundraising purposes, are political expenditures. If a general-purpose committee receives as an in-kind contribution brochures costing more than \$500 to produce, its distribution of the brochures constitutes a political expenditure subject to the 60-day waiting period. Tex.Ethics Comm.Op. 177 (1993).

§ 253.038. Payments Made to Purchase Real Property Prohibited

(a) A candidate or officeholder or a specific-purpose committee for supporting, opposing, or assisting the candidate or officeholder may not knowingly make or authorize a payment from a political contribution to purchase real property or to pay the interest on or principal of a note for the purchase of real property.

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(b) A person who violates this section commits an offense. An offense under this subsection is a Class A misdemeanor.

(c) This section does not apply to a payment made in connection with real property that was purchased before January 1, 1992.

Added by Acts 1991, 72nd Leg., ch. 304, § 5.07, eff. Jan. 1, 1992.

Historical and Statutory Notes

1991 Legislation

For effective date and application of the 1991 act, see Historical and Statutory Notes following § 251.001.

Cross References

Punishment, Class A misdemeanor, see V.T.C.A., Penal Code § 12.21.

Notes of Decisions

Date of application 1
Payment to spouse 2

Election Code § 253.035. Tex.Ethics Comm.Op. No. 248 (1995).

2. Payment to spouse

1. Date of application

Election Code § 253.038, which prohibits the use of political contributions to make payments on a note for the purchase of real property, does not apply to payments for property purchased before Jan. 1, 1992. If political contributions are used to pay part of the purchase price of an asset, a proportional amount of any income from the asset is subject to the prohibition on personal use in

A legislator's use of political contributions to make a rental payment to his spouse for the use of her separate property does not constitute a payment to purchase real property and does not violate Election Code § 253.038. Nor is such a payment a conversion to personal use as long as the payment does not exceed the fair market value of the use of the property. Tex.Ethics Comm.Op. No. 319 (1996).

§ 253.039. Contributions in Certain Public Buildings Prohibited

(a) A person may not knowingly make or authorize a political contribution while in the Capitol to:

- (1) a candidate or officeholder;
- (2) a political committee; or
- (3) a person acting on behalf of a candidate, officeholder, or political committee.

(b) A candidate, officeholder, or political committee or a person acting on behalf of a candidate, officeholder, or political committee may not knowingly accept a political contribution, and shall refuse a political contribution that is received, in the Capitol.

(c) This section does not prohibit contributions made in the Capitol through the United States postal service or a common or contract carrier.

(d) A person who violates this section commits an offense. An offense under this section is a Class A misdemeanor.

Added by Acts 1991, 72nd Leg., ch. 304, § 5.07, eff. Jan. 1, 1992.

Historical and Statutory Notes

1991 Legislation

For effective date and application of the 1991 act, see Historical and Statutory Notes following § 251.001.

Cross References

Punishment, Class A misdemeanor, see V.T.C.A., Penal Code § 12.21.

§ 253.040. Repealed by Acts 1995, 74th Leg., ch. 996, § 11(1), eff. Sept. 1, 1995

Historical and Statutory Notes

The repealed section, prohibiting separate officeholder accounts, was added by Acts 1991, 72nd Leg., ch. 304, § 5.07.

§ 253.041. Restrictions on Certain Payments

(a) A candidate or officeholder or a specific-purpose committee for supporting, opposing, or assisting the candidate or officeholder may not knowingly make or authorize a payment from a political contribution if the payment is made for personal services rendered by the candidate or officeholder or by the spouse or dependent child of the candidate or officeholder to:

(1) a business in which the candidate or officeholder has a participating interest of more than 10 percent, holds a position on the governing body of the business, or serves as an officer of the business; or

(2) the candidate or officeholder or the spouse or dependent child of the candidate or officeholder.

(b) A payment that is made from a political contribution to a business described by Subsection (a) and that is not prohibited by that subsection may not exceed the amount necessary to reimburse the business for actual expenditures made by the business.

(c) A person who violates this section commits an offense. An offense under this subsection is a Class A misdemeanor.

Added by Acts 1991, 72nd Leg., ch. 304, § 5.07, eff. Jan. 1, 1992.

Historical and Statutory Notes

1991 Legislation

For effective date and application of the 1991 act, see Historical and Statutory Notes following § 251.001.

Cross References

Punishment, Class A misdemeanor, see V.T.C.A., Penal Code § 12.21.

Notes of Decisions

Amount of payment 1

I. Amount of payment

A candidate who owns 50% of the stock in a corporation engaged in the advertising business may make a payment from a political contribution to the corporation to purchase advertising services and supplies if the payment is in the amount necessary to reimburse the corporation for actual expenditures; any payment greater than that amount would be in violation of section 253.041 of the Election Code and a payment less than that amount would be an impermissible corporate contribution. Tex.Ethics Comm.Op. No. 35 (1992).

A member of the legislature may use political contributions to pay for transportation to and from Austin for legislative purposes. A payment from political contributions to a business in one of the categories listed in Election Code § 253.041(a) must not exceed the amount necessary to reimburse the business for actual expenditures made by the business. If a situation arises in which a payment from political contributions is subject to both the restriction in § 253.041 and also the prohibition on corporate political contributions, the payment to the corporation must be in the amount reasonably necessary to reimburse the corporation for its expense, neither more nor less. Tex.Ethics Comm.Op. No. 249 (1995).

§ 253.042. Restrictions on Reimbursement of Personal Funds and Payments on Certain Loans

(a) A candidate or officeholder who makes political expenditures from the candidate's or officeholder's personal funds may not reimburse those personal funds from political contributions in amounts that in the aggregate exceed the following amounts for each election in which the person's name appears on the ballot:

- (1) for a statewide office other than governor, \$250,000; and
- (2) for governor, \$500,000.

(b) A candidate or officeholder who accepts one or more political contributions in the form of loans, including an extension of credit or a guarantee of a loan or extension of credit, from one or more persons related to the candidate or officeholder within the second degree by affinity or consanguinity may not use political contributions to repay the loans in amounts that in the aggregate exceed the amount prescribed by Subsection (a).

(c) The total amount of both reimbursements and repayments made by a candidate or officeholder under this section may not exceed the amount prescribed by Subsection (a).

(d) A person who is both a candidate and an officeholder covered by Subsection (a) may reimburse the person's personal funds or repay loans from political contributions only in one capacity.

(e) This section does not prohibit the payment of interest on loans covered by this section at a commercially reasonable rate, except that interest on loans from a candidate's or officeholder's personal funds or on loans from the personal funds of any person related to the candidate or officeholder within the second degree by affinity or consanguinity is included in the amount prescribed by Subsection (a), (b), or (c).

(f) A person who violates this section commits an offense. An offense under this section is a Class A misdemeanor.

(g) The commission shall study possible restrictions on amounts of reimbursements under Subsection (a) in connection with the offices of state senator and state representative and shall make appropriate recommendations to the legislature on those matters.

Added by Acts 1991, 72nd Leg., ch. 304, § 5.07, eff. Jan. 1, 1992. Amended by Acts 1997, 75th Leg., ch. 864, § 242, eff. Sept. 1, 1997.

Historical and Statutory Notes

1991 Legislation

For effective date and application of the 1991 act, see Historical and Statutory Notes following § 251.001.

Cross References

Punishment, Class A misdemeanor, see V.T.C.A., Penal Code § 12.21.
 Reimbursement of candidate or officeholder from political contributions for personal funds used for political expenditures, see V.T.C.A., Election Code § 253.035.

Notes of Decisions

**Interest 1
Reimbursement 2**

1. Interest

A candidate or officeholder may use political contributions to pay interest to himself or herself at a commercially reasonable rate in connection with political expenditures made from the candidate's or officeholder's personal funds if the candidate or officeholder properly reports the political expenditures from personal funds and indicates on

the report that he or she intends to pay reimbursement with interest. The report must also set out the rate at which the candidate or officeholder will pay himself or herself interest. Tex.Ethics Comm. Op. No. 375 (1997).

2. Reimbursement

A candidate who uses personal funds to make payments on a campaign loan is making a political expenditure from personal funds. This means that a candidate who properly reports such payments may use political contributions to reimburse him-

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self for the payments, subject to any applicable limit on reimbursement. Tex.Ethics Comm.Op. No. 400 (1998).

[Sections 253.043 to 253.060 reserved for expansion]

SUBCHAPTER C. INDIVIDUALS

§ 253.061. Direct Expenditure of \$100 or Less

Except as otherwise provided by law, an individual not acting in concert with another person may make one or more direct campaign expenditures in an election from the individual's own property if:

- (1) the total expenditures on any one or more candidates or measures do not exceed \$100; and
- (2) the individual receives no reimbursement for the expenditures.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987; Acts 1997, 75th Leg., ch. 864, § 243, eff. Sept. 1, 1997.

Historical and Statutory Notes

Derivation:

V.T.C.A. Election Code, § 251.003(a)(part).

Cross References

Corporations or labor organizations, direct expenditures on measures permitted in accordance with this section, see V.T.C.A., Election Code § 253.097.

Library References

Campaign contributions and expenditures, see Brooks, 35 Texas Practice § 11.22.

Notes of Decisions

Expenses attributable to committee 1

attributable to the committee. Tex.Ethics Comm. Op. No. 74 (1992).

1. Expenses attributable to committee

Political expenditures made by individual members of a political committee acting in concert are

A "loose knit group" may be required to register under the lobby statute. If a group has as a principal purpose making political contributions or making political expenditures, it is a political committee. Tex.Ethics Comm.Op. No. 114 (1992).

§ 253.062. Direct Expenditure Exceeding \$100

(a) Except as otherwise provided by law, an individual not acting in concert with another person may make one or more direct campaign expenditures in an election from the individual's own property that exceed \$100 on any one or more candidates or measures if:

- (1) the individual complies with Chapter 254 as if the individual were a campaign treasurer of a political committee; and
- (2) the individual receives no reimbursement for the expenditures.

(b) An individual making expenditures under this section is not required to file a campaign treasurer appointment.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987; Acts 1997, 75th Leg., ch. 864, § 244, eff. Sept. 1, 1997.

Historical and Statutory Notes

Derivation:

V.T.C.A. Election Code, § 251.003(a) (part).

Cross References

Corporations or labor organizations, direct expenditures on measures permitted in accordance with this section, see V.T.C.A., Election Code § 253.097.

Reporting by candidate, name and address required of each individual acting as campaign treasurer of political committee under this section, see V.T.C.A., Election Code § 254.061.

Notes of Decisions

Validity 1

1. Validity

As applied to campaign contributors, reporting and expenditure requirements and penalties imposed under Election Code did not act as ban on independent expenditures, as would violate free speech and association rights, but merely imposed reporting requirement on direct campaign expenditures that was reasonable and minimally restrictive method of furthering First Amendment values by opening basic processes of election system to public view. *Osterberg v. Peca* (Sup. 2000) 12 S.W.3d 31, certiorari denied 120 S.Ct. 2690, 530 U.S. 1244, 147 L.Ed.2d 962.

Election code's campaign contribution reporting requirements and penalties do not punish innocent First Amendment activity; the statute punishes only those who do not report that they have engaged in otherwise innocent First Amendment activity. (Per Abbott, J., with three Justices concurring and one Justice concurring specially.) *Osterberg v. Peca* (Sup. 2000) 12 S.W.3d 31, certiorari denied 120 S.Ct. 2690, 530 U.S. 1244, 147 L.Ed.2d 962.

As applied to husband and wife, Election Code's general requirement that group acting in concert to make campaign expenditures register as political committee instead of merely allowing members to report expenditures violated First Amendment right to freely associate. *Osterberg v. Peca* (Sup. 2000) 12 S.W.3d 31, certiorari denied 120 S.Ct. 2690, 530 U.S. 1244, 147 L.Ed.2d 962.

§ 253.063. Travel Expense

A direct campaign expenditure consisting of personal travel expenses incurred by an individual may be made without complying with Section 253.062(a)(1).

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987.

Historical and Statutory Notes

Derivation:

V.T.C.A. Election Code, § 251.003(b).

[Sections 253.064 to 253.090 reserved for expansion]

SUBCHAPTER D. CORPORATIONS AND LABOR ORGANIZATIONS

Cross References

Punishment, third-degree felony, see V.T.C.A., Penal Code § 12.34.

Reporting of contributions by corporations or labor organizations,

General purpose committees, see V.T.C.A., Election Code § 254.151.

Specific purpose committees, see V.T.C.A., Election Code § 254.121.

§ 253.091. Corporations Covered

This subchapter applies only to corporations that are organized under the Texas Business Corporation Act,¹ the Texas Non-Profit Corporation Act,² federal law, or law of another state or nation.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987.

¹ V.A.T.S. Bus.Corp. Act, art. 1.01 et seq.

² Vernon's Ann.Civ.St. art. 1396-1.01 et seq.

Historical and Statutory Notes

Derivation:

V.T.C.A. Election Code, § 251.001(3) (part).

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Cities	4
Limited liability companies	3
Nonprofit corporations	2
Out-of-state contributions	1

1. Out-of-state contributions

Title 15 of the Texas Election Code does not prohibit a Texas corporation from making contributions and expenditures in connection with elections in other states. Tex.Ethics Comm.Op. No. 277(1995).

2. Nonprofit corporations

Whether an article in a magazine published by a nonprofit corporation describing the purposes of the corporation's political committee is a solicitation of contributions to the committee is a fact question. If the article is a solicitation, it would be a permissible corporate expenditure if the magazine is sent only to employees or members of the corporation or to the families of employees or members. Tex.Ethics Comm.Op. No. 290 (1995).

3. Limited liability companies

A Texas limited liability company is subject to the restrictions in Election Code chapter 253, subchapter D, if it engages in a type of business listed in Election Code section 253.093 or if it is owned, in whole or in part, by an entity subject to the restrictions in Election Code chapter 253, subchapter D. Tex.Ethics Comm.Op. No. 383 (1997).

A Delaware limited liability company is subject to the restrictions in Election Code chapter 253, subchapter D, if it engages in a type of business listed in Election Code section 253.093 or if it is owned, in whole or in part, by an entity subject to the restrictions in Election Code chapter 253, subchapter D. Tex.Ethics Comm.Op. No. 383 (1997).

4. Cities

A candidate or officeholder may correct a report filed before September 12, 1997, to indicate an intent to reimburse himself or herself with interest for political expenditures from personal funds, as long as the political expenditures from personal funds and the intention to seek reimbursement for the expenditures were themselves timely reported. Tex.Ethics Comm.Op. No. 391 (1998).

§ 253.092. Treatment of Incorporated Political Committee

If a political committee the only principal purpose of which is accepting political contributions and making political expenditures incorporates for liability purposes only, the committee is not considered to be a corporation for purposes of this subchapter.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987.

Historical and Statutory Notes

Derivation:

V.T.C.A. Election Code, § 251.001(3) (part).

Notes of Decisions

Incorporation for liability purposes	1
Political committees	2

1. Incorporation for liability purposes

A political committee that incorporates under the Nonprofit Corporation Act for liability purposes only and states that its only purpose for incorporating is to accept contributions and make expenditures as a political committee is formed for

liability purposes only within the meaning of Election Code § 253.092. Tex.Ethics Comm.Op. No. 165 (1993).

2. Political committees

A nonprofit corporation formed to produce an informational newsletter for distribution to a city council member's constituents must form a political committee, since such a publication would constitute an officeholder contribution. Tex.Ethics Comm.Op. No. 242 (1995).

§ 253.093. Certain Associations Covered

(a) For purposes of this subchapter, the following associations, whether incorporated or not, are considered to be corporations covered by this subchapter: banks, trust companies, savings and loan associations or companies, insurance companies, reciprocal or interinsurance

exchanges, railroad companies, cemetery companies, government-regulated cooperatives, stock companies, and abstract and title insurance companies.

(b) For purposes of this subchapter, the members of the associations specified by Subsection (a) are considered to be stockholders.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987.

Historical and Statutory Notes

Derivation:

V.T.C.A. Election Code, § 251.001(3) (part).

Notes of Decisions

- Limited liability companies 3
- Professional corporations or associations 1
- Reimbursement by candidate 2

commercial market value for such political committee's use in fundraising auctions. Election Law Opinion No. DAD-29 (1982).

3. Limited liability companies

1. Professional corporations or associations

Professional corporation organized under Vernon's Ann.Civ.St. art. 1528e and professional association organized pursuant to Vernon's Ann.Civ.St. art. 1528f, are not prohibited from making a campaign contribution. Op.Atty.Gen.1980, No. MW-178.

A Texas limited liability company is subject to the restrictions in Election Code chapter 253, subchapter D, if it engages in a type of business listed in Election Code section 253.093 or if it is owned, in whole or in part, by an entity subject to the restrictions in Election Code chapter 253, subchapter D. *Tex.Ethics Comm.Op. No. 383 (1997)*.

2. Reimbursement by candidate

It is permissible under this chapter for non-affiliated as well as corporate members of an incorporated non-profit trade association to donate items to the association's non-profit political education organization, which in turn would sell the items to the association's political committee at

A Delaware limited liability company is subject to the restrictions in Election Code chapter 253, subchapter D, if it engages in a type of business listed in Election Code section 253.093 or if it is owned, in whole or in part, by an entity subject to the restrictions in Election Code chapter 253, subchapter D. *Tex.Ethics Comm.Op. No. 383 (1997)*.

§ 253.094. Contributions and Expenditures Prohibited

(a) A corporation or labor organization may not make a political contribution or political expenditure that is not authorized by this subchapter.

(b) A corporation or labor organization may not make a political contribution or political expenditure in connection with a recall election, including the circulation and submission of a petition to call an election.

(c) A person who violates this section commits an offense. An offense under this section is a felony of the third degree.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987.

Historical and Statutory Notes

1989 Legislation

Without reference to the revision of this title by Acts 1987, 70th Leg., ch. 899, § 1, former § 251.010(a) was amended by Acts 1987, 70th Leg., ch. 472, § 51. Acts 1987, 70th Leg., ch. 472, § 51 was repealed by Acts 1989, 71st Leg., ch. 2, § 7.19,

to conform to Acts 1987, 70th Leg., ch. 899, eff. Aug. 28, 1989.

Derivation:

V.T.C.A. Election Code, § 251.010(a)(part), (e)(part).

Library References

Campaign contributions and expenditures, see Brooks, 85 Texas Practice § 11.22.

United States Supreme Court

First amendment, restrictions on corporate election expenditures, see *Federal Election Com'n v. Massachusetts Citizens for Life, Inc.*, U.S.Mass. 1986, 107 S.Ct. 616, 479 U.S. 238, 93 L.Ed.2d 539.

Free speech, equal protection, corporate expenditures for political candidates from general trea-

surey, see *Austin v. Michigan Chamber of Commerce*, U.S.Mich.1990, 110 S.Ct. 1391, 494 U.S. 652, 108 L.Ed.2d 652, on remand 937 F.2d 608.

Notes of Decisions

Construction and application 1
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Purpose of law 2
Reimbursement by candidate 5

1. Construction and application

A contribution by a business corporation to a nonprofit organization conducting nonpartisan research for a legislative caucus was not necessarily prohibited by or subject to this Act, the Business Corporation Act, Vernon's Ann.Civ.St. art. 1349, the Lobby Act [Vernon's Ann.Civ.St. art. 6252-9c (repealed; see, now, V.T.C.A. Government Code § 305.001 et seq.)] or V.T.C.A. Penal Code, § 36.01 et seq. Op.Atty.Gen.1983, No. JM-50.

A corporation did not violate V.A.T.S. Election Code, art. 14.06, if corporation advertised in political committee newsletters where such political committee was directed towards a candidate providing the corporation paid a fair market price for such advertising. Election Law Letter Advisory No. 1982-3.

A donation by a corporate or labor organization to a political party which was to be used to fulfill the political party's statutory mandate under V.A.T.S. Election Code, art. 13.01 et seq. (transferred; now, § 162.001 et seq.), to conduct a primary election was not a violation of V.A.T.S. Election Code, art. 14.06. Election Law Opinion No. DAD-18 (1982).

It is permissible for a corporation to make a donation to a nonprofit corporation to help defray the costs of the League of United Latin-American Citizens national convention when such donation is not intended to be and will not in fact be used or held for the purpose of aiding or defeating the nomination or election of any candidate for public office. Election Law Opinion No. DAD-37 (1982).

It is permissible for a corporation to make a donation to help defray the administrative operating costs of a county political party headquarters when the donation is not intended to be and will not in fact be used or held for some election for the purpose of aiding or defeating the nomination or

election of any candidate. Election Law Opinion No. DAD-64 (1982).

It was permissible for a corporation to make a donation to help defray the administrative operating costs of a county or state political party headquarters to the extent that the donations did not become directly or indirectly utilized for activities which would have constituted "contributions" as defined in subsec. (d) of V.A.T.S. Election Code, art. 14.01, and the criminal sanctions in this chapter made it especially advisable for the state or county political parties and corporations involved to have been able to establish that corporate donations were not and would not be accepted or utilized for any purpose which could have been construed a contribution. Election Law Opinion No. JWF-3 (1983).

Under subsecs. (D) and (E) of V.A.T.S. Election Code, art. 14.01 [transferred; now, subds. (4) and (5) of § 251.001], and subsecs. (A) and (C) of V.A.T.S. Election Code, art. 14.06, an investment return paid by a corporation to a political committee on funds invested by the political committee is permissible under this chapter as long as the investment return was made in the due course of business and did not constitute an intended or actual obligation to transfer or a transfer by the corporation of something of value involved in an election directly or indirectly to the political committee for the purpose of aiding or defeating the nomination or election of any candidate. Election Law Opinion No. DAD-72 (1983).

It is permissible for a political committee to invest contributions it has received in investments designed to earn a positive return from corporate investment sources and the political committee may subsequently utilize these returns for future contributions and other lawful political purposes as long as they do not constitute a contribution from the corporation. Election Law Opinion No. DAD-72 (1983).

A partnership including one or more corporate partners is subject to the same restrictions on political activity that apply to corporations. Tex.Ethics Comm.Op. No. 215 (1994).

A corporation may make expenditures for creating and maintaining an Internet site containing photos and information relating to candidates in upcoming elections if all candidates in an election have access to the site on an equal basis and if the site is not used to support or oppose any candidate. Tex.Ethics Comm.Op. No. 327 (1996).

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Note 2

2. Purpose of law

Purpose of Legislature in enacting V.A.T.S. Election Code, art. 14.06 was not to limit funding for the primaries, but rather to control funding for candidates and measures. Election Law Opinion No. DAD-18 (1982).

3. Law governing

Federal regulations governing federal reimbursement rates for corporations or labor organizations providing personnel, facilities, or services to a person in connection with an election are different from state regulations and do not apply to state campaigns. Election Law Letter Advisory No. 1982-1.

4. Loans

If a bank made a loan to a political committee and had no intention of seeking repayment and in fact failed to seek repayment by the committee, the bank had made a prohibited contribution under V.A.T.S. Election Code, art. 14.06, to the extent that the loan was not repaid. Election Law Opinion No. JWF-26 (1984).

A bank which provided a loan to a political committee under more favorable terms than those offered to the bank's nonpolitical customers violated subsec. (A) of V.A.T.S. Election Code, art. 14.06. Election Law Opinion No. JWF-26 (1984).

5. Reimbursement by candidate

"Commercial value" as used in directive issued by Secretary of State relating to reimbursement by candidate to corporation or labor organization for use of personnel, facilities, or services of such corporation or labor organization in connection with an election must be interpreted in light of each fact situation so that underlying purpose of reimbursement requirement will be effectuated. Election Law Letter Advisory No. 1982-1.

When a corporation provides a candidate with benefits of facilities, airplane transportation and personnel time, to achieve compliance with this chapter, corporation must be reimbursed the corporate costs of such benefits. Election Law Letter Advisory No. 1982-1.

It is permissible under this chapter for non-affiliated as well as corporate members of an incorporated non-profit trade association to donate items to the association's non-profit political education organization, which in turn would sell the items to the association's political committee at commercial market value for such political committee's use in fundraising auctions. Election Law Opinion No. DAD-29 (1982).

A member of the legislature may use political contributions to pay for transportation to and from Austin for legislative purposes. A payment from political contributions to a business in one of the categories listed in Election Code § 253.041(a) must not exceed the amount necessary to reimburse the business for actual expenditures made by the business. If a situation arises in which a payment from political contributions is subject to both the restriction in § 253.041 and also the pro-

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hibition on corporate political contributions, the payment to the corporation must be in the amount reasonably necessary to reimburse the corporation for its expense, neither more nor less. Tex.Ethics Comm.Op. No. 249 (1995).

6. Political expenditure

A corporation may not pay for the printing or mailing of postcards that advocate the election of judges who won a local bar poll. Such postcards would be "political advertising" and the name of an individual or group that entered in an agreement to have the cards printed would have to appear on the postcards as a part of the disclosure statement. Tex.Ethics Comm.Op. No. 77 (1992).

Corporate expenditure on a nonpartisan notice to inform employees about an election and encouraging people to register to vote is not prohibited as a political expenditure because it is not made in connection with the campaign for an elective office or on a measure, or as an officeholder expenditure. Tex.Ethics Comm.Op. No. 37 (1992).

A candidate who owns 50% of the stock in a corporation engaged in the advertising business may make a payment from a political contribution to the corporation to purchase advertising services and supplies if the payment is in the amount necessary to reimburse the corporation for actual expenditures; any payment greater than that amount would be in violation of section 253.041 of the Election Code and a payment less than that amount would be an impermissible corporate contribution. Tex.Ethics Comm.Op. No. 35 (1992).

7. Contributions

An incorporated trade association may not give individuals the option of making a payment for registration at a convention to a political committee rather than to the trade association. Tex.Ethics Comm.Op. No. 38 (1992).

A corporation would be making a political contribution if it permitted the use of corporate assets for campaign or office holder purposes. Tex.Ethics Comm.Op. No. 116 (1993).

An incorporated association may raise funds for a general-purpose committee it has established by combining contribution solicitations with the association's yearly dues invoices to its members. Tex.Ethics Comm.Op. No. 181 (1994).

A legislator may accept a loan of computer equipment from a private company only if acceptance is permissible under Penal Code § 36.10 and Election Code § 253.094. Tex.Ethics Comm.Op. No. 191 (1994).

A contribution to a political committee given with the restriction that it be used to conduct a seminar unrelated to candidates or measures is not a political contribution; similarly, expenditures for such a seminar would not be political expenditures. Tex.Ethics Comm.Op. No. 200 (1994).

A nonprofit corporation formed to produce an informational newsletter for distribution to a city council member's constituents must form a political committee, since such a publication would consti-

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tute an officeholder contribution. Tex.Ethics Comm.Op. No. 242 (1995).

A corporation that provides all candidates the same opportunity to make campaign materials available to corporate employees would not be making a campaign contribution. And that context "the same opportunity" means not only that all candidates must be given the opportunity to provide information, but also that the corporate communications to each candidate regarding the opportunity to provide information must be essentially the same and that the corporation must handle each candidate's information in the same way. Tex.Ethics Comm.Op. No. 336 (1996).

A contribution from a corporation to a county or district clerk that is intended to defray the clerk's costs of running for an elective position with an association of county or district clerks is a prohibited "officeholder contribution" unless the costs are reimbursable with public money. Tex.Ethics Comm.Op. No. 396 (1998).

7.5. Employee contributions

Contributions to Texas state candidates made through an employee participation plan established by a corporation under regulations of the Federal Election Commission do not constitute corporate contributions under the Texas Election Code, and do not trigger any reporting or registration requirements on the part of the corporation. Corporate expenditures to establish and administer such an employee participation plan are not political expenditures regulated by Title 15 of the Election Code. Tex.Ethics Comm.Op. 175 (1993).

8. Corporation

A partnership that has corporate partners is subject to the same restrictions on political activity that apply to corporations. Tex.Ethics Comm.Op. No. 221 (1994).

A political contribution from a partnership does not become a corporate contribution simply because the partnership uses a corporation to distribute its funds. Tex.Ethics Comm.Op. No. 108 (1992).

A candidate may contract with a carnival corporation for the corporation to present a carnival at the candidate's fundraiser and remit a portion of the proceeds to the candidate in exchange for the candidate's provision of land and services if such an arrangement reflects the usual and normal practice in the carnival industry for contracts with non-political as well as political entities. Purchase of carnival tickets would be reportable political contributions, and so could not be made by corpo-

rations or labor unions. Tex.Ethics Comm.Op. No. 143 (1993).

A corporation is prohibited by Election Code § 253.094 from making expenditures to communicate with its employees, retirees and their families about an election only if the communication "expressly advocates" the defeat or election of an identified candidate. Tex.Ethics Comm.Op. No. 198 (1994).

Waiver of a membership fee to a private club is a "benefit" purposes of Chapter 36 of the Penal Code. Generally, a candidate or officeholder could accept an offer to use the facilities of a private club for campaign or officeholder purposes. Such a contribution would not be permissible, however, if the club were incorporated. If a candidate or officeholder accepted the opportunity to use the facilities of a private club as a campaign contribution or an officeholder contribution, the candidate or officeholder could not use the facilities for personal purposes unrelated to his or her candidacy or to his or her duties or activities of office. Tex.Ethics Comm.Op. No. 268 (1995).

To avoid the prohibition on corporate campaign contributions it is critical that the terms of a contract between a corporation and a candidate be typical of the terms the corporation offers to political and non-political customers. Tex.Ethics Comm.Op. No. 398 (1998).

8.4. Incorporated association

An incorporated association may make expenditures for candidate appearances before the association's members or stockholders only if all candidates for the office are given the same opportunity to appear and are presented on an equal footing. An incorporated association may make expenditures to set up a phone bank to urge members or stockholders and their families to vote for particular candidates, or to conduct a partisan get-out-the-vote drive directed at those individuals, only if the candidates benefitted have not given their prior consent or approval. Corporate expenditures incurred in issuing a press release through the corporation's usual press contacts announcing endorsements of candidates by a political committee established by the corporation are prohibited political expenditures. Tex.Ethics Comm.Op. No. 340.

9. Fines and penalties

A corporation may pay an administrative fine assessed under Title 15 of the Election Code against the treasurer of a general-purpose committee that the corporation sponsors. Tex.Ethics Comm.Op. No. 216 (1994).

§ 253.095. Punishment of Agent

An officer, director, or other agent of a corporation or labor organization who commits an offense under this subchapter is punishable for the grade of offense applicable to the corporation or labor organization.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987.

Historical and Statutory Notes

Derivation:

V.T.C.A. Election Code, § 251.010(f).

United States Supreme Court

First amendment, restrictions on corporate election expenditures, see Federal Election Com'n v. Massachusetts Citizens for Life, Inc., U.S.Mass. 1986, 107 S.Ct. 616, 479 U.S. 238, 93 L.Ed.2d 539.

§ 253.096. Contribution on Measure

A corporation or labor organization may make campaign contributions from its own property in connection with an election on a measure only to a political committee for supporting or opposing measures exclusively.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987.

Historical and Statutory Notes

Derivation:

V.T.C.A. Election Code, §§ 251.003(e)(1), 251.010(a) (part).

United States Supreme Court

First amendment, restrictions on corporate election expenditures, see Federal Election Com'n v. Massachusetts Citizens for Life, Inc., U.S.Mass. 1986, 107 S.Ct. 616, 479 U.S. 238, 93 L.Ed.2d 539.

Notes of Decisions

Aiding or defeating measures 2
 Authorized contributions 3
 Validity 1

1. Validity

Insofar as V.A.T.S. Election Code, art. 14.06, prohibited corporations from making contributions and expenditures for purpose of aiding or defeating the approval of any measures submitted to a vote of the people, it was unconstitutional. *Frias v. Board of Trustees of Ector County Independent School Dist.* (Civ.App. 1979) 584 S.W.2d 944, dismissed w.o.j., certiorari denied 100 S.Ct. 531, 444 U.S. 996, 62 L.Ed.2d 426.

Insofar as V.A.T.S. Election Code, art. 14.06, prohibited corporations from making contributions and expenditures "for the purpose of aiding or defeating the approval of any measures submitted to a vote of the people of this state or any subdivision thereof," it was unconstitutional. *Op.Atty. Gen.*1978, No. H-1175.

2. Aiding or defeating measures

Corporate contributions to political committee which used such funds to promote passage of school bond issue were permissible. *Frias v. Board of Trustees of Ector County Independent School Dist.* (Civ.App. 1979) 584 S.W.2d 944, dismissed w.o.j., certiorari denied 100 S.Ct. 531, 444 U.S. 996, 62 L.Ed.2d 426.

In instances where labor organization makes direct expenditure or a contribution to a specific purpose political committee for purpose of aiding or defeating a measure, labor organization is not obliged to form a political committee or designate a campaign treasurer, although it may decide for other reasons to do so. *Election Law Letter Advisory No. 1982-2.*

If a labor organization contributes any amount of money to a specific political committee for purpose of aiding or defeating a measure, it need not report this expenditure since public disclosure purpose of this chapter is fulfilled by political committee reporting the contribution received. *Election Law Letter Advisory No. 1982-2.*

Under V.A.T.S. Election Code, art. 14.06, corporation may advertise in political committee publication regardless of amount paid for such advertising if the political committee is directed to measures rather than candidates. *Election Law Letter Advisory No. 1982-3.*

3. Authorized contributions

There would be exceptions to the rule which prohibits the option of payment for registration at a convention of an incorporated trade association to a political committee for contributions to a political committee for supporting or opposing measures exclusively or for expenditures to finance the establishment or administration of a general-purpose committee. *Tex.Ethics Comm.Op. No. 38 (1992).*

§ 253.097. Direct Expenditure on Measure

A corporation or labor organization not acting in concert with another person may make one or more direct campaign expenditures from its own property in connection with an election on a measure if the corporation or labor organization makes the expenditures in accordance with Section 253.061 or 253.062 as if the corporation or labor organization were an individual.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987.

Historical and Statutory Notes**Derivation:**

V.T.C.A. Election Code, §§ 251.003(e)(2),
251.010(a) (part).

United States Supreme Court

First amendment, restrictions on corporate election expenditures, see Federal Election Com'n v.

Massachusetts Citizens for Life, Inc., U.S. Mass. 1986, 107 S.Ct. 616, 479 U.S. 238, 93 L.Ed.2d 539.

Notes of Decisions

Aiding or defeating measures 2
Validity 1

1. Validity

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If a labor organization contributes any amount of money to a specific political committee for purpose of aiding or defeating a measure, it need not report this expenditure since public disclosure purpose of this chapter is fulfilled by political committee reporting the contribution received. *Election Law Letter Advisory No. 1982-2.*

Under V.A.T.S. Election Code, art. 14.06, corporation may advertise in political committee publication regardless of amount paid for such advertising if the political committee is directed to measures rather than candidates. *Election Law Letter Advisory No. 1982-3.*

§ 253.098. Communication With Stockholders or Members

(a) A corporation or labor organization may make one or more direct campaign expenditures from its own property for the purpose of communicating directly with its stockholders or members, as applicable, or with the families of its stockholders or members.

(b) An expenditure under this section is not reportable under Chapter 254.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987.

Historical and Statutory Notes**Derivation:**

V.T.C.A. Election Code, § 251.010(c) (part).

United States Supreme Court

First amendment, restrictions on corporate election expenditures, see Federal Election Com'n v.

Massachusetts Citizens for Life, Inc., U.S.Mass. 1986, 107 S.Ct. 616, 479 U.S. 238, 93 L.Ed.2d 539.

Notes of Decisions

Member 1
Phone bank 2

1. Member

A "member" of a farm mutual insurance company, as provided for in Chapter 16 of the Insurance Code, is a "member" of the farm mutual insurance company for purposes of Election Code § 253.098. Tex.Ethics Comm.Op. No. 227 (1994).

2. Phone bank

An incorporated association may make expenditures for candidate appearances before the association's members or stockholders only if all candi-

dates for the office are given the same opportunity to appear and are presented on an equal footing. An incorporated association may make expenditures to set up a phone bank to urge members or stockholders and their families to vote for particular candidates, or to conduct a partisan get-out-the-vote drive directed at those individuals, only if the candidates benefitted have not given their prior consent or approval. Corporate expenditures incurred in issuing a press release through the corporation's usual press contacts announcing endorsements of candidates by a political committee established by the corporation are prohibited political expenditures. Tex.Ethics Comm.Op. No. 340.

§ 253.099. Nonpartisan Voter Registration and Get-out-the-Vote Campaigns

(a) A corporation or labor organization may make one or more expenditures to finance nonpartisan voter registration and get-out-the-vote campaigns aimed at its stockholders or members, as applicable, or at the families of its stockholders or members.

(b) An expenditure under this section is not reportable under Chapter 254.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987.

Historical and Statutory Notes

Derivation:

V.T.C.A. Election Code, § 251.010(c)(part).

Library References

Campaign contributions and expenditures, see Brooks, 35 Texas Practice § 11.22.

United States Supreme Court

First amendment, restrictions on corporate election expenditures, see Federal Election Com'n v.

Massachusetts Citizens for Life, Inc., U.S.Mass. 1986, 107 S.Ct. 616, 479 U.S. 238, 93 L.Ed.2d 539.

Notes of Decisions

Nonpartisan expenditures 1

1. Nonpartisan expenditures

Corporate expenditure on a nonpartisan notice to inform employees about an election and encour-

aging people to register to vote is not prohibited as a political expenditure because it is not made in connection with the campaign for an elective office or on a measure, or as an officeholder expenditure. Tex.Ethics Comm.Op. No. 37 (1992).

§ 253.100. Expenditures for General-Purpose Committee

(a) A corporation, acting alone or with one or more other corporations, may make one or more political expenditures to finance the establishment or administration of a general-purpose committee.

(b) A corporation may make political expenditures to finance the solicitation of political contributions to a general-purpose committee assisted under Subsection (a) from the stockholders, employees, or families of stockholders or employees of one or more corporations.

(c) A labor organization may engage in activity authorized for a corporation by Subsections (a) and (b). For purposes of this section, the members of a labor organization are considered to be corporate stockholders.

(d) An expenditure under this section is not reportable by the general-purpose committee as a political contribution under Chapter 254.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987.

Historical and Statutory Notes

Derivation:

V.T.C.A. Election Code, § 251.010(c) (part).

Library References

Campaign contributions and expenditures, see
Brooks, 35 Texas Practice § 11.22.

United States Supreme Court

First amendment, restrictions on corporate election expenditures, see Federal Election Com'n v.

Massachusetts Citizens for Life, Inc., U.S. Mass. 1986, 107 S.Ct. 616, 479 U.S. 238, 93 L.Ed.2d 539.

Notes of Decisions

Authorized contributions	2
Contributions, generally	3
Corporations	1
Expenditures	4
Fines and penalties	5
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Use of funds	6

1. Corporations

No provision in the Texas Election Code prohibits a corporation from being established just to form a political committee. There are no restrictions in the Election Code on who may make political contributions to a corporate political committee. *Tex.Ethics Comm.Op. No. 10 (1992)*.

2. Authorized contributions

A corporation may use a payroll deduction plan to solicit contributions to its general-purpose political committee, and, if the corporation is a dues-paying member of an incorporated trade association, it may use its payroll deduction plan to solicit contributions to the trade association's political committee as well. *Tex.Ethics Comm.Op. No. 217 (1994)*.

A solicitation for contributions sent to a corporation's employees in accordance with Election Code § 253.100(b) may not contain express advocacy in regard to an identified candidate. *Tex.Ethics Comm.Op. No. 225 (1994)*.

The solicitable class of an incorporated association includes the solicitable class of each of its member corporations. *Tex.Ethics Comm.Op. No. 223 (1994)*.

A corporation's payment of funds to an employee activity fund as a prize for the group of employees that contributes the most to a general-purpose

political committee sponsored by the corporation is permissible as a solicitation cost under Election Code § 253.100(b). *Tex.Ethics Comm.Op. No. 362 (1997)*.

3. Contributions, generally

There would be exceptions to the rule which prohibits the option of payment for registration at a convention of an incorporated trade association to a political committee for contributions to a political committee for supporting or opposing measures exclusively or for expenditures to finance the establishment or administration of a general-purpose committee. *Tex.Ethics Comm.Op. No. 38 (1992)*.

Under Election Code § 253.100, a corporation, acting alone or in concert with one or more corporations, may finance the administration of a general-purpose committee with donations from its own property. Under § 253.100 subdivision D, such contributions are not reportable as political contributions by the general-purpose committee. However, if an individual makes a contribution to a general-purpose committee, specifying that the contribution is to be used for administrative expenses only, the general-purpose committee must report the donation as it does any other political contribution. *Tex.Ethics Comm.Op. No. 132 (1993)*.

An incorporated association may raise funds for a general-purpose committee it has established by combining contribution solicitations with the association's yearly dues invoices to its members. *Tex.Ethics Comm.Op. No. 181 (1994)*.

Whether a general-purpose political committee is willing to honor a request to use a contribution from an individual for administrative purposes only is a matter between the contributor and the committee. A contribution from an individual to a

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general-purpose political committee that is earmarked for administrative purposes must be reported. *Tex.Ethics Comm.Op. No. 344 (1996).*

A labor organization would be making a political contribution to a political committee if it honored a request from its members to transfer a portion of a member's required membership dues to the political committee. *Tex.Ethics Comm.Op. No. 379 (1997).*

4. Expenditures

An incorporated trade association may finance costs directly connected with a fundraiser held for the benefit of a general-purpose committee it assists under Election Code § 253.100(a), including the cost of meals and invitations, for its stockholders, members, employees, or the families of such persons. Any costs associated with the fundraiser attributable to individuals who are not stockholders, members, or employees or family of stockholders, members, or employees of the corporation may not be paid from the funds of the corporation. Such costs should be calculated as the actual cost of an individual's attendance at the event, or if

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actual cost is not reasonably determinable, then the cost shall be calculated as a pro rata share of the total cost of the event. *Tex.Ethics Comm.Op. No. 163 (1993).*

5. Fines and penalties

A corporation may pay an administrative fine assessed under Title 15 of the Election Code against the treasurer of a general-purpose committee that the corporation sponsors. *Tex.Ethics Comm.Op. No. 216 (1994).*

6. Use of funds

Any transfer of funds from labor organization property to a political committee may be used only for purposes permitted by Election Code section 253.100. *Tex.Ethics Comm.Op. No. 379 (1997).*

7. Interest

Interest earned on money belonging to a labor organization can be used for political committee purposes only to the extent permitted by Election Code section 253.100. *Tex.Ethics Comm.Op. No. 379 (1997).*

§ 253.101. Unlawful Contribution or Expenditure by Committee

(a) A political committee assisted by a corporation or labor organization under Section 253.100 may not make a political contribution or political expenditure in whole or part from money that is known by a member or officer of the political committee to be dues, fees, or other money required as a condition of employment or condition of membership in a labor organization.

(b) A person who violates this section commits an offense. An offense under this section is a felony of the third degree.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987.

Historical and Statutory Notes

Derivation:

V.T.C.A. Election Code, § 251.010(c) (part), (e) (part).

United States Supreme Court

First amendment, restrictions on corporate election expenditures, see *Federal Election Com'n v.*

Massachusetts Citizens for Life, Inc., U.S.Mass. 1986, 107 S.Ct. 616, 479 U.S. 238, 93 L.Ed.2d 539.

Notes of Decisions

Construction and application 1
Dues and fees 3
Solicitation of contributions 2

2. Solicitation of contributions

An incorporated association may raise funds for a general-purpose committee it has established by combining contribution solicitations with the association's yearly dues invoices to its members. *Tex.Ethics Comm.Op. No. 181 (1994).*

3. Dues and fees

An incorporated trade association may not give individuals the option of making a payment for registration at a convention to a political committee rather than to the trade association. *Tex.Ethics Comm.Op. No. 38 (1992).*

1. Construction and application

Since violations of V.A.T.S. Election Code, art. 14.06, involved penal sanctions, any omissions or ambiguity in statute had to be construed in favor of one who was subject to the penal provisions. *Election Law Opinion No. DAD-18 (1982).*

§ 253.102. Coercion Prohibited

(a) A corporation or labor organization or a political committee assisted by a corporation or labor organization under Section 253.100 commits an offense if it uses or threatens to use physical force, job discrimination, or financial reprisal to obtain money or any other thing of value to be used to influence the result of an election or to assist an officeholder.

(b) A political committee assisted by a corporation or labor organization under Section 253.100 commits an offense if it accepts or uses money or any other thing of value that is known by a member or officer of the political committee to have been obtained in violation of Subsection (a).

(c) An offense under this section is a felony of the third degree.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987.

Historical and Statutory Notes

Derivation:

V.T.C.A. Election Code, § 251.010(c) (part), (e) (part).

United States Supreme Court

First amendment, restrictions on corporate election expenditures, see Federal Election Com'n v. Massachusetts Citizens for Life, Inc., U.S.Mass. 1986, 107 S.Ct. 616, 479 U.S. 238, 93 L.Ed.2d 539.

Notes of Decisions

Construction and application 1

ambiguity in statute had to be construed in favor of one who was subject to the penal provisions. Election Law Opinion No. DAD-18 (1982).

1. Construction and application

Since violations of V.A.T.S. Election Code, art. 14.06, involved penal sanctions, any omissions or

§ 253.103. Corporate Loans

(a) A corporation may not make a loan to a candidate, officeholder, or political committee for campaign or officeholder purposes unless:

(1) the corporation has been legally and continuously engaged in the business of lending money for at least one year before the loan is made; and

(2) the loan is made in the due course of business.

(b) This section does not apply to a loan covered by Section 253.096.

(c) A person who violates this section commits an offense. An offense under this section is a felony of the third degree.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987.

Historical and Statutory Notes

Derivation:

V.T.C.A. Election Code, § 251.010(c) (part), (e) (part).

United States Supreme Court

First amendment, restrictions on corporate election expenditures, see Federal Election Com'n v. Massachusetts Citizens for Life, Inc., U.S.Mass. 1986, 107 S.Ct. 616, 479 U.S. 238, 93 L.Ed.2d 539.

Notes of Decisions

Construction and application 1
 Due course of business 3
 Loans 2

1. Construction and application

Since violations of V.A.T.S. Election Code, art. 14.06, involved penal sanctions, any omissions or ambiguity in statute had to be construed in favor of one who was subject to the penal provisions. Election Law Opinion No. DAD-18 (1982).

2. Loans

Where loan was made by bank to political committee in the ordinary course of business and bank's sole purpose in making the loan was to make a profit, there was no violation of V.A.T.S. Election Code, art. 14.07, as it existed on March 6, 1975, date of loan, proscribing loans to political committees "for the purpose of aiding or defeating the nomination or election of any candidate." *Hogue v. National Bank of Commerce of San Antonio* (Civ.App. 1978) 562 S.W.2d 291, ref. n.r.e..

Within V.A.T.S. Election Code, art. 14.07, proscribing loan by corporation to political committee "for the purpose of aiding or defeating the nomination or election of any candidate," word "purpose" meant the purpose or intention of the lender in making the loan, and not the actual use of the proceeds by the committee; "purpose" was synonymous with plan, intent, object and aim. *Hogue v. National Bank of Commerce of San Antonio* (Civ.App. 1978) 562 S.W.2d 291, ref. n.r.e..

Under subsec. 3.11(b) of *Vernon's Ann.Civ.St.* 5429b-2 (repealed; see, now V.T.C.A. Government Code, § 311.001 et seq.) providing that if penalty was reduced by reenactment, revision or amendment of statute, penalty was to be imposed according to the statute as amended, V.A.T.S. Election Code, art. 14.07, as amended, which expressly authorized loans by banks to political committees was controlling and candidate opposed by political committee in question had no cause of action against bank under art. 14.07 as amended, which generally prohibited corporations from making gifts, loans, or payments to candidates and political committees. *Hogue v. National Bank of Commerce of San Antonio* (Civ.App. 1978) 562 S.W.2d 291, ref. n.r.e..

After bank which had been in business for less than one year made loans to candidate in violation of this section, defense of illegality applied to renewal notes made after bank had been in business for more than one year. *Plaza Nat. Bank v. Monfrey* (App. 4 Dist. 1986) 706 S.W.2d 714, ref. n.r.e..

Although a loan described in subd. (C) of V.A.T.S. Election Code, art. 14.06, was not a con-

tribution from the lending institution, a recipient candidate was required to disclose on the sworn statement covering that reporting period the full name and complete address of each person who guaranteed the loan, regardless of the amount guaranteed by each person, the date and total value of the loan or the value of each guarantee. Election Law Opinion No. JWF-22 (1983).

A loan made to a candidate for use in the candidate's campaign by a corporation which was legally engaged in the business of lending money and which had conducted such business continuously for more than one year prior to making of such loan was not a contribution from the lending institution or bank under V.A.T.S. Election Code, art. 14.06 (transferred; now, this section), provided that the loan was made in the due course of business in accordance with the applicable banking laws and regulations, but once the candidate expended the proceeds from this loan for political purposes under subd. (E) of V.A.T.S. Election Code, art. 14.01 [transferred; now, subd. (5) of § 251.001], the candidate would report such disbursements as expenditures on the applicable sworn statement. Election Law Opinion No. JWF-22 (1983).

A loan made to a lending corporation's own political committee is not a prohibited corporate contribution under this chapter if the corporation has been legally engaged in the business of lending money continuously for more than one year prior to the making of such loan and the loan is made in due course of business under terms comparable to those on the open market. Election Law Opinion No. JWF-26 (1984).

If a bank made a loan to a political committee and had no intention of seeking repayment and in fact failed to seek repayment by the committee, the bank had made a prohibited contribution under V.A.T.S. Election Code, art. 14.06, to the extent that the loan was not repaid. Election Law Opinion No. JWF-26 (1984).

A bank which provided a loan to a political committee under more favorable terms than those offered to the bank's nonpolitical customers violated subsec. (A) of V.A.T.S. Election Code, art. 14.06. Election Law Opinion No. JWF-26 (1984).

3. Due course of business

Findings that bank made loan indirectly to candidate "for his election campaign" and that bank knew that proceeds of the loans were to be used by candidate "in his election campaign" were equivalent of finding that loans were made for purpose of aiding election of candidate as prohibited by § 251.010 [now, this section]. *Plaza Nat. Bank v. Monfrey* (App. 4 Dist. 1986) 706 S.W.2d 714, ref. n.r.e..

§ 253.104. Contribution to Political Party

(a) A corporation or labor organization may make a contribution from its own property to a political party to be used as provided by Chapter 257.

(b) A corporation or labor organization may not knowingly make a contribution authorized by Subsection (a) during a period beginning on the 60th day before the date of a general election for state and county officers and continuing through the day of the election.

(c) A corporation or labor organization that knowingly makes a contribution in violation of this section commits an offense. An offense under this section is a felony of the third degree.

Added by Acts 1991, 72nd Leg., ch. 304, § 5.08, off. Jan. 1, 1992.

Historical and Statutory Notes

1991 Legislation

For effective date and application of the 1991 act, see Historical and Statutory Notes following § 251.001.

Cross References

Punishment, Third Degree Felony, see V.T.C.A., Penal Code § 12.34.

Reporting of contributions authorized by this section, see V.T.C.A., Election Code § 257.003.

Time for accepting contributions authorized by this section, see V.T.C.A., Election Code § 257.004.

Notes of Decisions

Construction and application 1
Contribution from own property 3
Purpose of law 2

1. Construction and application

Since violations of V.A.T.S. Election Code, art. 14.06, involved penal sanctions, any omissions or ambiguity in statute had to be construed in favor of one who was subject to the penal provisions. Election Law Opinion No. DAD-18 (1982).

It is permissible for a corporation to make a donation to help defray the administrative operating costs of a county political party headquarters when the donation is not intended to be and will not in fact be used or held for some election for the purpose of aiding or defeating the nomination or election of any candidate. Election Law Opinion No. DAD-64 (1982).

It was permissible for a corporation to make a donation to help defray the administrative operating costs of a county or state political party headquarters to the extent that the donations did not become directly or indirectly utilized for activities which would have constituted "contributions" as defined in subsec. (d) of V.A.T.S. Election Code, art. 14.01, and the criminal sanctions in this chapter made it especially advisable for the state or county political parties and corporations involved to have been able to establish that corporate donations were not and would not be accepted or utilized for any purpose which could have been construed a contribution. Election Law Opinion No. JWF-3 (1983).

Plaintiffs in a lawsuit may contribute a payment made to the plaintiffs in settlement of the lawsuit to a political party to use for campaign purposes as long as none of the plaintiffs is an entity subject to the restrictions on political contributions from corporations or labor organizations in subch. D of Chapter 253 of the Election Code. Tex.Ethics Comm.Op. No. 299 (1996).

Title 15 of the Election Code does not prohibit a corporation from making contributions to a candidate for county chair of a political party. Tex.Ethics Comm.Op. No. 301 (1996).

2. Purpose of law

Purpose of Legislature in enacting V.A.T.S. Election Code, art. 14.06 was not to limit funding for the primaries, but rather to control funding for candidates and measures. Election Law Opinion No. DAD-18 (1982).

3. Contribution from own property

A political party may accept contributions from a corporation to be used to purchase a building for a permanent party headquarters, provided that the party complies with Election Code Chapter 257 relating to corporate and labor union contributions to a political party. Tex.Ethics Comm.Op. 176 (1993).

A county executive committee of a political party may not use corporate contributions to pay the costs associated with the printing and distribution of brochures soliciting donations to and membership in the party or the costs associated with voter registration drives. Tex.Ethics Comm.Op. No. 272 (1995).

[Sections 253.105 to 253.130 reserved for expansion]

SUBCHAPTER E. CIVIL LIABILITY

§ 253.131. Liability to Candidates

(a) A person who knowingly makes or accepts a campaign contribution or makes a campaign expenditure in violation of this chapter is liable for damages as provided by this section.

(b) If the contribution or expenditure is in support of a candidate, each opposing candidate whose name appears on the ballot is entitled to recover damages under this section.

(c) If the contribution or expenditure is in opposition to a candidate, the candidate is entitled to recover damages under this section.

(d) In this section, "damages" means:

- (1) twice the value of the unlawful contribution or expenditure; and
- (2) reasonable attorney's fees incurred in the suit.

(e) Reasonable attorney's fees incurred in the suit may be awarded to the defendant if judgment is rendered in the defendant's favor.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987.

Historical and Statutory Notes

Derivation:

V.T.C.A. Election Code, §§ 251.008(a), (b), 251.010(d)(part).

Library References

Campaign contributions and expenditures, see Brooks, 35 Texas Practice § 11.22.

United States Supreme Court

First amendment, restrictions on corporate election expenditures, see Federal Election Com'n v.

Massachusetts Citizens for Life, Inc., U.S.Mass. 1986, 107 S.Ct. 616, 479 U.S. 238, 93 L.Ed.2d 539.

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requirements to withstand contributors' First Amendment free speech challenge; that person enforcing law and receiving damages could be private party rather than state did not amount to additional restriction on First Amendment rights. Osterberg v. Peca (Sup. 2000) 12 S.W.3d 31, certiorari denied 120 S.Ct. 2690, 530 U.S. 1244, 147 L.Ed.2d 962.

1. Validity

Provision of V.A.T.S. Election Code, art. 14.07(b), for recovery of double damages by candidate for office with respect to any contribution made to his opponent by corporation did not violate provision of Const. Art. 3, § 35, that no statute shall contain more than one subject which shall be expressed in title. Scott v. Handy-Andy, Inc. (Civ. App. 1973) 490 S.W.2d 196, ref. n.r.e..

Election Code provision creating private right of action through which opposing candidates could seek civil damages from individuals who made illegal campaign contributions advanced sufficient state interests of deterring violators and encouraging candidates' enforcement of Code's reporting

1.5. Construction and application

Election Code provision creating private right of action through which opposing candidates could seek civil damages from individuals who made illegal campaign contributions was designed to deter violators and encourage enforcement by candidates and others directly participating in process, rather than placing entire enforcement burden on the government. Osterberg v. Peca (Sup. 2000) 12 S.W.3d 31, certiorari denied 120 S.Ct. 2690, 530 U.S. 1244, 147 L.Ed.2d 962.

2. Damages

Political candidate was entitled to receive from political committee penalty sum representing dou-

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ble amount spent in support of rival candidate during period when committee was in violation of requirement that it designate campaign treasurer, under this section; imposition of damages was mandatory. *Ragsdale v. Progressive Voters League* (App. 5 Dist. 1990) 790 S.W.2d 77, writ granted, affirmed in part, reversed in part 801 S.W.2d 880, rehearing overruled.

Court of Appeals could reform judgment awarding election candidate \$1 and enter judgment for correct amount in suit brought under this section allowing candidate to recover from political committee which had received contributions prior to designating campaign treasurer penalty consisting of double amount of campaign contributions made by committee to opponent, without necessity of remanding case; records of expenditures were detailed, and were not controverted. *Ragsdale v. Progressive Voters League* (App. 5 Dist. 1990) 790 S.W.2d 77, writ granted, affirmed in part, reversed in part 801 S.W.2d 880, rehearing overruled.

An award of damages to a candidate in a lawsuit brought under the Election Code § 253.131 is not a contribution given with intent to aid the recipient's campaign, nor is the award of damages reportable by the recipient under any provision of Title 15 of The Election Code. *Tex.Ethics Comm.Op. No. 3294* (1996).

3. Attorney fees

Trial court abused discretion by awarding candidate who had obtained a judgment against political committee supporting opposing candidate \$150 in attorney fees. *Ragsdale v. Progressive Voters League* (App. 5 Dist. 1990) 790 S.W.2d 77, writ granted, affirmed in part, reversed in part 801 S.W.2d 880, rehearing overruled.

In awarding attorney fees incurred by party prevailing on election law violations claim, court must take into account factors including nature and complexity of case, nature of services provided by counsel, time required for trial, the client's interest that is at stake, responsibility imposed on counsel, and skill and expertise required. *Ragsdale v. Progressive Voters League* (Sup. 1990) 801 S.W.2d 880, rehearing overruled.

Award of only \$150 in attorney fees to candidate who prevailed on his claims of election law violations by group supporting his opponent was an abuse of discretion where candidate's attorney's testimony as to time involved, nature of services rendered, and reasonableness of \$22,500 fees charged was uncontroverted. *Ragsdale v. Progressive Voters League* (Sup. 1990) 801 S.W.2d 880, rehearing overruled.

In judge's action against defendants arising from improper expenditures for advertising during judge's reelection campaign, judge waived recovery of attorney fees by failing to obtain jury finding on attorney fees. *Osterberg v. Peca* (App. 8 Dist. 1997) 952 S.W.2d 121, review granted, affirmed in part, reversed in part, rehearing overruled, withdrawn and superseded on overruling of rehearing 12 S.W.3d 31, certiorari denied 120 S.Ct. 2690, 530 U.S. 1244, 147 L.Ed.2d 962.

Candidate's failure to object, before entry of incomplete verdict, when jury did not return answer to jury question regarding candidate's entitlement to attorney fees in action he brought alleging illegal campaign contributions under Election Code was waiver of any benefit from jury question. *Osterberg v. Peca* (Sup. 2000) 12 S.W.3d 31, certiorari denied 120 S.Ct. 2690, 530 U.S. 1244, 147 L.Ed.2d 962.

4. Contributions and expenditures

Election Code provision stating that any person who knowingly makes or knowingly accepts unlawful campaign contribution is civilly liable to each opposing candidate whose name appeared on ballot in election in which unlawful contribution or expenditure was involved imposed civil liability for unlawful campaign contributions or expenditures but not for unreported contributions or expenditures, and thus, provision did not apply to permit Supreme Court candidate who did not become successful candidate's opposing candidate until after primary election to assert cause of action against opponent for campaign contribution and expenditure reporting violations connected with primary. *Howell v. Mauzy* (App. 3 Dist. 1994) 899 S.W.2d 690, writ denied, rehearing of writ of error overruled.

For purposes of Election Code's reporting and disclosure requirements, "direct campaign expenditure" by individual in candidate election includes only those expenditures that "expressly advocate" election or defeat of identified candidate. *Osterberg v. Peca* (Sup. 2000) 12 S.W.3d 31, certiorari denied 120 S.Ct. 2690, 530 U.S. 1244, 147 L.Ed.2d 962.

Advertisement urging voters to vote for candidate's opponent if voters believed that the "Court-house exists for the people, and not for judges, accidents of politics, and lawyers," that "[t]he spirit of the law, not just the letter, must be employed for justice and the people," and that "[e]fficiency at the expense of justice cannot be tolerated," did "expressly advocate" a candidate's election or defeat, for purposes of Election Code which required reporting and disclosure of expenditures on such advertisements, despite allegedly ambiguous language, where clear message was that voters should choose opponent. *Osterberg v. Peca* (Sup. 2000) 12 S.W.3d 31, certiorari denied 120 S.Ct. 2690, 530 U.S. 1244, 147 L.Ed.2d 962.

An individual who provides free legal services to a candidate who brings a lawsuit under Election Code § 253.131 makes a nonreportable political contribution, since the contribution of an individual's personal service is not required to be reported. *Tex.Ethics Comm.Op. No. 329* (1996).

5. Knowingly

Trial court acted within its discretion in defining term "knowingly," for purposes of statute providing civil cause of action to aggrieved candidates against person who knowingly makes or accepts campaign contribution or makes campaign expenditure in violation of Election Code, as being aware of nature of conduct or that circumstances exist,

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and as being aware that conduct is reasonably certain to be in violation of the law; court also instructed jury on law applicable to direct campaign expenditures and on reporting requirements applicable to campaign treasurers of political committees. *Osterberg v. Peca* (App. 8 Dist. 1997) 952 S.W.2d 121, review granted, affirmed in part, reversed in part, rehearing overruled, withdrawn and superseded on overruling of rehearing 12 S.W.3d 31, certiorari denied 120 S.Ct. 2690, 530 U.S. 1244, 147 L.Ed.2d 962.

Under statute providing private cause of action to candidates against person who knowingly makes or accepts campaign contribution or makes campaign expenditure in violation of Election Code, person is liable if there was a violation of another provision of Election Code and if that violation was committed knowingly. *Osterberg v. Peca* (App. 8 Dist. 1997) 952 S.W.2d 121, review granted, affirmed in part, reversed in part, rehearing overruled, withdrawn and superseded on overruling of rehearing 12 S.W.3d 31, certiorari denied 120 S.Ct. 2690, 530 U.S. 1244, 147 L.Ed.2d 962.

Jury's finding that defendant knowingly violated Election Code through advertising expenditures and was thus liable to judge who ran for reelection was supported by evidence that judge spoke at bar association meeting approximately one month prior to election and accused defendant of playing "fast and loose" with Election Code and that listener told defendant about judge's comments. *Osterberg v. Peca* (App. 8 Dist. 1997) 952 S.W.2d 121, review granted, affirmed in part, reversed in part, rehearing overruled, withdrawn and superseded on overruling of rehearing 12 S.W.3d 31, certiorari denied 120 S.Ct. 2690, 530 U.S. 1244, 147 L.Ed.2d 962.

§ 253.132. Liability to Political Committees

(a) A corporation or labor organization that knowingly makes a campaign contribution to a political committee or a direct campaign expenditure in violation of Subchapter D is liable for damages as provided by this section to each political committee of opposing interest in the election in connection with which the contribution or expenditure is made.

(b) In this section, "damages" means:

- (1) twice the value of the unlawful contribution or expenditure; and
- (2) reasonable attorney's fees incurred in the suit.

(c) Reasonable attorney's fees incurred in the suit may be awarded to the defendant if judgment is rendered in the defendant's favor.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987.

Historical and Statutory Notes

Derivation:

V.T.C.A. Election Code, § 251.010(d) (part).

United States Supreme Court

First amendment, restrictions on corporate election expenditures, see Federal Election Com'n v.

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Evidence did not support finding that defendant knowingly violated Election Code, and thus defendant was not liable to judge who had run for reelection; defendant participated in relevant expenditures for advertisement opposing judge's reelection, but record was completely devoid of evidence that defendant participated in expenditures with knowledge that they were in violation of Code. *Osterberg v. Peca* (App. 8 Dist. 1997) 952 S.W.2d 121, review granted, affirmed in part, reversed in part, rehearing overruled, withdrawn and superseded on overruling of rehearing 12 S.W.3d 31, certiorari denied 120 S.Ct. 2690, 530 U.S. 1244, 147 L.Ed.2d 962.

Candidate who seeks to enforce Election Code reporting requirements is not required to prove that persons making unreported expenditures against candidate knew they were breaking law; language of statute creating damages remedy for violation of Election Code, as well as language and structure of Election Code, demonstrate legislature's intent that "knowingly" refer only to act of making or accepting contribution or expenditure and not to whether contribution or expenditure violated Election Code. *Osterberg v. Peca* (Sup. 2000) 12 S.W.3d 31, certiorari denied 120 S.Ct. 2690, 530 U.S. 1244, 147 L.Ed.2d 962.

Court of Appeals' error in requiring candidate to prove that Election Code violators knew they were violating Code was harmless as to violator whom Court found to have known he was violating Code, but was reversible as to violator whom Court found not to possess such knowledge. *Osterberg v. Peca* (Sup. 2000) 12 S.W.3d 31, certiorari denied 120 S.Ct. 2690, 530 U.S. 1244, 147 L.Ed.2d 962.

Massachusetts Citizens for Life, Inc., U.S.Mass. 1986, 107 S.Ct. 616, 479 U.S. 238, 93 L.Ed.2d 539.

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§ 253.133. Liability to State

A person who knowingly makes or accepts a political contribution or makes a political expenditure in violation of this chapter is liable for damages to the state in the amount of triple the value of the unlawful contribution or expenditure.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987.

Historical and Statutory Notes**Derivation:**

V.T.C.A. Election Code, §§ 251.008(c),
251.010(d).

United States Supreme Court

First amendment, restrictions on corporate election expenditures, see *Federal Election Com'n v. Massachusetts Citizens for Life, Inc.*, U.S. Mass. 1986, 107 S.Ct. 616, 479 U.S. 238, 93 L.Ed.2d 539.

§ 253.134. Civil Penalties Imposed by Commission

This title does not prohibit the imposition of civil penalties by the commission in addition to criminal penalties or other sanctions imposed by law.

Added by Acts 1991, 72nd Leg., ch. 304, § 5.09, eff. Jan. 1, 1992.

Historical and Statutory Notes**1991 Legislation**

For effective date and application of the 1991 act, see Historical and Statutory Notes following § 251.001.

SUBCHAPTER F. JUDICIAL CAMPAIGN FAIRNESS ACT

§ 253.151. Applicability of Subchapter

This subchapter applies only to a political contribution or political expenditure in connection with the office of:

- (1) chief justice or justice, supreme court;
- (2) presiding judge or judge, court of criminal appeals;
- (3) chief justice or justice, court of appeals;
- (4) district judge;
- (5) judge, statutory county court; or
- (6) judge, statutory probate court.

Added by Acts 1995, 74th Leg., ch. 763, § 1, eff. June 16, 1995.

Historical and Statutory Notes**1995 Legislation**

Sections 10(d) and 11 of the 1995 Act provide:

"[Sec. 10.] (d) Subchapter F, Chapter 253, Election Code, as added by this Act, applies only to a political contribution accepted or political expenditure made on or after the effective date of Section 1 of this Act. A political contribution accepted or political expenditure made before the effective date of Section 1 of this Act is governed by the law in effect on the date the contribution was accepted or the expenditure was made and is not aggregated with political contributions accepted or political expenditures made on or after that date."

"Sec. 11. (a) For purposes of Subchapter F, Chapter 253, Election Code, as added by this Act, not later than the 15th day after the effective date of Section 1 of this Act, the secretary of state shall:

"(1) deliver to the Texas Ethics Commission a written certification of the population of each judicial district for which a candidate for judge or justice must file a campaign treasurer appointment with the commission; and

"(2) deliver to the county clerk of each county a written certification of the county's population, if the county:

"(A) comprises an entire judicial district under Chapter 26, Government Code; or

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"(B) has a statutory county court or statutory probate court, other than a multicounty statutory county court created under Subchapter D, Chapter 25, Government Code.

"(b) On receipt of the certification of population under Subsection (a) of this section, the Texas Ethics Commission or county clerk, as appropriate, shall make available to each candidate for an office covered by Subchapter F, Chapter 253, Election

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Code, as added by this Act, written notice of the contribution limits applicable to the office under Section 253.155, Election Code, as added by this Act, and the expenditure limits applicable to the office under Section 253.168, Election Code, as added by this Act.

"(c) In this section, "judicial district" means the territory from which a judicial candidate is elected."

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In general 1

1. In general

A judicial candidate for a newly created district court may accept political contributions and make political expenditures despite the fact that the new

district has yet to be approved by the United States Department of Justice, provided that the candidate has filed a campaign treasurer appointment and a Judicial Declaration of Intent form with the proper filing authority for the newly created district court. Tex.Ethics Comm.Op. No. 288 (1995).

§ 253.152. Definitions

In this subchapter:

(1) "Complying candidate" or "complying officeholder" means a judicial candidate who files a declaration of compliance under Section 253.164(a)(1).

(2) "In connection with an election" means:

(A) with regard to a contribution that is designated in writing for a particular election, the election designated; or

(B) with regard to a contribution that is not designated in writing for a particular election or that is designated as an officeholder contribution, the next election for that office occurring after the contribution is made.

(3) "Judicial district" means the territory from which a judicial candidate is elected.

(4) "Noncomplying candidate" means a judicial candidate who:

(A) files a declaration of intent to exceed the limits on expenditures under Section 253.164(a)(2);

(B) files a declaration of compliance under Section 253.164(a)(1) but later exceeds the limits on expenditures;

(C) fails to file a declaration of compliance under Section 253.164(a)(1) or a declaration of intent under Section 253.164(a)(2); or

(D) violates Section 253.173 or 253.174.

(5) "Statewide judicial office" means the office of chief justice or justice, supreme court, or presiding judge or judge, court of criminal appeals.

Added by Acts 1995, 74th Leg., ch. 763, § 1, eff. June 16, 1995. Amended by Acts 1997, 75th Leg., ch. 479, § 1, eff. Sept. 1, 1997.

Historical and Statutory Notes

1995 Legislation

For application provision of the 1995 Act, see notes following V.T.C.A., Election Code § 253.151.

§ 253.153. Contribution Prohibited Except During Election Period

(a) A judicial candidate or officeholder, a specific-purpose committee for supporting or opposing a judicial candidate, or a specific-purpose committee for assisting a judicial officeholder may not knowingly accept a political contribution except during the period:

(1) beginning on:

(A) the 210th day before the date an application for a place on the ballot or for nomination by convention for the office is required to be filed, if the election is for a full term; or

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(B) the later of the 210th day before the date an application for a place on the ballot or for nomination by convention for the office is required to be filed or the date a vacancy in the office occurs, if the election is for an unexpired term; and

(2) ending on the 120th day after the date of:

(A) the general election for state and county officers, if the candidate or officeholder has an opponent in the general election;

(B) except as provided by Subsection (c), the runoff primary election, if the candidate or officeholder is a candidate in the runoff primary election and does not have an opponent in the general election; or

(C) except as provided by Subsection (c), the general primary election, if the candidate or officeholder is not a candidate in the runoff primary election and does not have an opponent in the general election.

(b) Subsection (a)(2) does not apply to a political contribution that was made and accepted with the intent that it be used to defray expenses incurred in connection with an election contest.

(c) Notwithstanding Subsection (a)(2), a judicial candidate who does not have an opponent whose name will appear on the ballot or a specific-purpose committee for supporting such a candidate may accept a political contribution after another person files a declaration of write-in candidacy opposing the candidate.

(d) A person who violates this section is liable for a civil penalty not to exceed three times the amount of the political contributions accepted in violation of this section.

Added by Acts 1995, 74th Leg., ch. 763, § 1, eff. June 16, 1995. Amended by Acts 1997, 75th Leg., ch. 479, § 2, eff. Sept. 1, 1997.

Historical and Statutory Notes

1995 Legislation

For application provision of the 1995 Act, see notes following V.T.C.A., Election Code § 253.151.

Notes of Decisions

Construction and application 4
Date of vacancy 2
Primary runoff candidates 1
Unopposed candidates 3

1. Primary runoff candidates

A candidate in a primary runoff and unopposed in the general election may accept political contributions during a period ending 120 days after the date of the primary runoff. *Tex.Ethics Comm.Op.* No. 335 (1996).

2. Date of vacancy

For purposes of calculating the fundraising period under Election Code § 253.153 (a) (1) (B), a vacancy occurs on the date provided in Election Code § 201.023. *Tex.Ethics Comm.Op.* No. 339 (1996).

3. Unopposed candidates

A judicial candidate nominated under Election Code § 202.006 to fill a vacancy in an unexpired

term at the November general election may accept political contributions until 120 days after the November general election, regardless of whether the candidate has an opponent in the November election. *Tex.Ethics Comm.Op.* No. 339 (1996).

4. Construction and application

Justices and justices-elect of the Supreme Court and the Court of Criminal Appeals who had an opponent in the November 1996 general election may accept political contributions in accordance with the Judicial Campaign Fairness Act until March 5, 1997. *Tex.Ethics Comm.Op.* No. 351 (1996).

A judicial candidate named in June to fill a vacancy in a nomination may accept political contributions until 20 days after the November general election, regardless of whether the candidate has an opponent in the November election. *Tex.Ethics Comm.Op.* No. 406.

§ 253.154. Write-in Candidacy

(a) A write-in candidate for judicial office or a specific-purpose committee for supporting a write-in candidate for judicial office may not knowingly accept a political contribution before the candidate files a declaration of write-in candidacy.

(b) A person who violates this section is liable for a civil penalty not to exceed three times the amount of the political contributions accepted in violation of this section.

Added by Acts 1995, 74th Leg., ch. 763, § 1, eff. June 16, 1995.

Historical and Statutory Notes

1995 Legislation

For application provision of the 1995 Act, see notes following V.T.C.A., Election Code § 253.151.

§ 253.1541. Acceptance of Officeholder Contributions by Person Appointed to Fill Vacancy

(a) This section applies only to a person appointed to fill a vacancy in an office covered by this subchapter who, at the time of appointment, does not hold another office covered by this subchapter.

(b) Notwithstanding Section 253.153, a person to whom this section applies may accept officeholder contributions beginning on the date the person assumes the duties of office and ending on the 60th day after that date.

Added by Acts 1997, 75th Leg., ch. 552, § 1, eff. Sept. 1, 1997.

Historical and Statutory Notes

1997 Legislation

Section 3(b) of Acts 1997, 75th Leg., ch. 552 provides:

“Section 253.1541, Election Code, as added by this Act, applies only to a political contribution

accepted on or after September 1, 1997. A political contribution accepted before September 1, 1997, is governed by the law in effect on the date the contribution was accepted.”

§ 253.155. Contribution Limits

(a) Except as provided by Subsection (c), a judicial candidate or officeholder may not knowingly accept political contributions from a person that in the aggregate exceed the limits prescribed by Subsection (b) in connection with each election in which the person is involved.

(b) The contribution limits are:

- (1) for a statewide judicial office, \$5,000; or
- (2) for any other judicial office:
 - (A) \$1,000, if the population of the judicial district is less than 250,000;
 - (B) \$2,500, if the population of the judicial district is 250,000 to one million; or
 - (C) \$5,000, if the population of the judicial district is more than one million.

(c) This section does not apply to a political contribution made by a general-purpose committee.

(d) For purposes of this section, a contribution by a law firm whose members are each members of a second law firm is considered to be a contribution by the law firm that has members other than the members the firms have in common.

(e) A person who receives a political contribution that violates Subsection (a) shall return the contribution to the contributor not later than the later of:

- (1) the last day of the reporting period in which the contribution is received; or
- (2) the fifth day after the date the contribution is received.

(f) A person who violates this section is liable for a civil penalty not to exceed three times the amount of the political contributions accepted in violation of this section.

Added by Acts 1995, 74th Leg., ch. 763, § 1, eff. June 16, 1995. Amended by Acts 1997, 75th Leg., ch. 479, § 3, eff. Sept. 1, 1997.

Historical and Statutory Notes

1995 Legislation

Section 9 of the 1995 Act provides:

“Sections 253.155, 253.156, 253.157, 253.163 through 253.171, and 253.173, Election Code, as added by this Act, are not severable, and none

would have been enacted without the others. If any one of those provisions is held invalid, each of those provisions is invalid.”

For application provision of the 1995 Act, see notes following V.T.C.A., Election Code § 253.151.

Notes of Decisions

Law firms 1
 Political candidates 2
 Relatives 3

ute more than \$2,500 in the aggregate per election to a candidate for district judge. Tex.Ethics Comm.Op. No. 342 (1996).

1. Law firms

A judicial candidate may not accept from a member of a law firm political contributions exceeding the maximum amount prescribed in Election Code §253.155. If a member of a law firm moves from one firm to another, political contributions made by the member count toward the contribution limits only of the law firm of which he as a member when he made the contributions. Tex.Ethics Comm.Op. No. 274 (1995).

In a judicial district with a population between 250,000 and 1,000,000 a law firm may not contrib-

2. Political candidates

A transfer between a judicial candidate and a specific-purpose political committee supporting the candidate is not subject to the contribution limits in the Judicial Campaign Fairness Act, Elec. Code § 253.155. Tex.Ethics Comm.Op. No. 281 (1996).

3. Relatives

A judicial candidate is not restricted in the amount the candidate may accept from the candidate's father, even if the father's contribution consists of his own political funds. Tex.Ethics Comm. Op. No. 300 (1996).

§ 253.156. Renumbered as V.T.C.A., Election Code § 253.1601 by Acts 1997, 75th Leg., ch. 479, § 4, eff. Sept. 1, 1997

§ 253.157. **Limit on Contribution by Law Firm or Member or General-Purpose Committee of Law Firm**

(a) A judicial candidate or officeholder or a specific-purpose committee for supporting or opposing a judicial candidate may not accept a political contribution in excess of \$50 from a person if:

(1) the person is a law firm, a member of a law firm, or a general-purpose committee established or controlled by a law firm; and

(2) the contribution when aggregated with all political contributions accepted by the candidate, officeholder, or committee from the law firm, other members of the law firm, or a general-purpose committee established or controlled by the law firm in connection with the election would exceed six times the applicable contribution limit under Section 253.155.

(b) A person who receives a political contribution that violates Subsection (a) shall return the contribution to the contributor not later than the later of:

(1) the last day of the reporting period in which the contribution is received; or

(2) the fifth day after the date the contribution is received.

(c) A person who fails to return a political contribution as required by Subsection (b) is liable for a civil penalty not to exceed three times the total amount of political contributions accepted from the law firm, members of the law firm, or general-purpose committees established or controlled by the law firm in connection with the election.

(d) For purposes of this section, a general-purpose committee is established or controlled by a law firm if the committee is established or controlled by members of the law firm.

(e) In this section:

(1) "Law firm" means a partnership, limited liability partnership, or professional corporation organized for the practice of law.

(2) "Member" means a partner, associate, shareholder, employee, or person designated "of counsel" or "of the firm".

Added by Acts 1995, 74th Leg., ch. 763, § 1, eff. June 16, 1995. Amended by Acts 1997, 75th Leg., ch. 479, § 5, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 552, § 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, § 5.16, eff. Sept. 1, 1999.

Historical and Statutory Notes**1995 Legislation**

For severance provision of the 1995 Act, see notes following V.T.C.A., Election Code § 253.155.

For application provision of the 1995 Act, see notes following V.T.C.A., Election Code § 253.151.

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1997 Legislation

Section 11(b) of Acts 1997, 75th Leg., ch. 479 provides:

"Sections 253.157 and 253.169, Election Code, as amended by this Act, apply only to a political contribution accepted or political expenditure made on or after September 1, 1997. A political contribution accepted or political expenditure made before September 1, 1997, is governed by the law in effect on the date the contribution was accepted or the expenditure was made and is not aggregated with political contributions accepted or political expenditures made on or after September 1, 1997."

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Section 3(c) of Acts 1997, 75th Leg., ch. 552 provides:

"The change in law made by this Act to Section 253.157, Election Code, applies only to a political contribution accepted by a specific-purpose committee on or after September 1, 1997, and a political contribution accepted by a specific-purpose committee before September 1, 1997, is governed by the law in effect on the date the contribution was accepted and is not aggregated with political contributions accepted by the committee on or after September 1, 1997."

Notes of Decisions

Individual contributions 1

1. Individual contributions

A judicial candidate may not accept from a member of a law firm political contributions ex-

ceeding the maximum amount prescribed in Election Code §253.155. If a member of a law firm moves from one firm to another, political contributions made by the member count toward the contribution limits only of the law firm of which he as a member when he made the contributions. Tex.Ethics Comm.Op. No. 274 (1995).

§ 253.158. Contribution by Spouse or Child Considered to be Contribution by Individual

(a) For purposes of Sections 253.155 and 253.157, a contribution by the spouse or child of an individual is considered to be a contribution by the individual.

(b) In this section, "child" means a person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes.

Added by Acts 1995, 74th Leg., ch. 763, § 1, eff. June 16, 1995.

Historical and Statutory Notes

1995 Legislation

For application provision of the 1995 Act, see notes following V.T.C.A., Election Code § 253.151.

§ 253.159. Exception to Contribution Limits

Sections 253.155 and 253.157 do not apply to an individual who is related to the candidate or officeholder within the second degree by consanguinity, as determined under Subchapter B, Chapter 573, Government Code.¹

Added by Acts 1995, 74th Leg., ch. 763, § 1, eff. June 16, 1995.

¹ V.T.C.A., Government Code § 573.021 et seq.

Historical and Statutory Notes

1995 Legislation

For application provision of the 1995 Act, see notes following V.T.C.A., Election Code § 253.151.

§ 253.160. Aggregate Limit on Contributions from and Direct Campaign Expenditures by General-Purpose Committee

(a) A judicial candidate or officeholder or a specific-purpose committee for supporting or opposing a judicial candidate or assisting a judicial officeholder may not knowingly accept a political contribution from a general-purpose committee that, when aggregated with each other political contribution from a general-purpose committee in connection with an election, exceeds 15 percent of the applicable limit on expenditures prescribed by Section 253.168, regardless of whether the limit on expenditures is suspended.

(b) A person who receives a political contribution that violates Subsection (a) shall return the contribution to the contributor not later than the later of:

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- (1) the last day of the reporting period in which the contribution is received; or
- (2) the fifth day after the date the contribution is received.

(c) For purposes of this section, an expenditure by a general-purpose committee for the purpose of supporting a candidate, for opposing the candidate's opponent, or for assisting the candidate as an officeholder is considered to be a contribution to the candidate unless the campaign treasurer of the general-purpose committee, in an affidavit filed with the authority with whom the candidate's campaign treasurer appointment is required to be filed, states that the committee has not directly or indirectly communicated with the candidate's campaign, including the candidate, an aide to the candidate, a campaign officer, or a campaign consultant, or a specific-purpose committee in regard to a strategic matter, including polling data, advertising, or voter demographics, in connection with the candidate's campaign.

(d) This section does not apply to a political expenditure by the principal political committee of the state executive committee or a county executive committee of a political party that complies with Section 253.171(b).

(e) A person who violates this section is liable for a civil penalty not to exceed three times the amount by which the political contributions accepted in violation of this section exceed the applicable limit prescribed by Subsection (a).

Added by Acts 1995, 74th Leg., ch. 763, § 1, eff. June 16, 1995. Amended by Acts 1997, 75th Leg., ch. 479, § 6, eff. Sept. 1, 1997.

Historical and Statutory Notes

1995 Legislation

For application provision of the 1995 Act, see notes following V.T.C.A., Election Code § 253.151.

§ 253.1601. Contribution to Certain Committees Considered Contribution to Candidate

For purposes of Sections 253.155, 253.157, and 253.160, a contribution to a specific-purpose committee for the purpose of supporting a judicial candidate, opposing the candidate's opponent, or assisting the candidate as an officeholder is considered to be a contribution to the candidate.

Added by Acts 1995, 74th Leg., ch. 763, § 1, eff. June 16, 1995. Renumbered from V.T.C.A., Election Code § 253.156 and amended by Acts 1997, 75th Leg., ch. 479, § 4, eff. Sept. 1, 1997.

Historical and Statutory Notes

1995 Legislation

For severance provision of the 1995 Act, see notes following V.T.C.A., Election Code § 253.155.

For application provision of the 1995 Act, see notes following V.T.C.A., Election Code § 253.151.

§ 253.161. Use of Contribution from Nonjudicial or Judicial Office Prohibited

(a) A judicial candidate or officeholder, a specific-purpose committee for supporting or opposing a judicial candidate, or a specific-purpose committee for assisting a judicial officeholder may not use a political contribution to make a campaign expenditure for judicial office or to make an officeholder expenditure in connection with a judicial office if the contribution was accepted while the candidate or officeholder:

- (1) was a candidate for an office other than a judicial office; or
- (2) held an office other than a judicial office, unless the person had become a candidate for judicial office.

(b) A candidate, officeholder, or specific-purpose committee for supporting, opposing, or assisting the candidate or officeholder may not use a political contribution to make a campaign expenditure for an office other than a judicial office or to make an officeholder expenditure in connection with an office other than a judicial office if the contribution was accepted while the candidate or officeholder:

- (1) was a candidate for a judicial office; or
- (2) held a judicial office, unless the person had become a candidate for another office.

(c) This section does not prohibit a candidate or officeholder from making a political contribution to another candidate or officeholder.

(d) A person who violates this section is liable for a civil penalty not to exceed three times the amount of political contributions used in violation of this section.

Added by Acts 1995, 74th Leg., ch. 763, § 1, eff. June 16, 1995.

Historical and Statutory Notes

1995 Legislation

For application provision of the 1995 Act, see notes following V.T.C.A., Election Code § 253.151.

Notes of Decisions

In general 1

1. In general

A senior judge may use surplus political funds to pay for continuing legal education courses. *Tex.Ethics Comm.Op. No. 279 (1995).*

A judge may use political contributions to pay the expenses of a social event sponsored by a bar association as long as the payments are in connection with a judge's activities as a candidate or officeholder. *Tex.Ethics Comm.Op. No. 284 (1995).*

A former judge sitting by assignment may use unexpended political contributions to pay for required continuing legal education courses. *Tex.Ethics Comm.Op. No. 291 (1995).*

A district judge who accepted contributions in connection with a 1996 judicial election and eventually decided not to run may use those contributions to make officeholder expenditures or to make campaign expenditures in connection with a future judicial election. *Tex.Ethics Comm.Op. No. 307 (1996).*

A judicial candidate may spend political contributions to hold a victory party in conjunction with

a charity golf tournament. *Tex.Ethics Comm.Op. No. 314 (1996).*

Generally, Texas Election Code does not prohibit the use of campaign contributions received in connection with one office to campaign for another office. However, there are certain restrictions on using contributions accepted in connection with a nonjudicial office to make campaign expenditures in connection with a judicial office and on using contributions accepted in connection with a judicial office to make campaign expenditures in connection with a nonjudicial office. Also, federal law may restrict the use of contributions accepted in connection with a state or local office to make campaign expenditures in connection with a campaign for federal office. *Tex.Ethics Comm.Op. No. 317 (1996).*

A judicial candidate who has accepted contributions in accordance with the provisions of the Judicial Campaign Fairness Act may use those contributions to pay debts incurred in connection with a past judicial election. *Tex.Ethics Comm. Op. No. 348 (1996).*

The restrictions in Election Code section 253.161 do not apply to the use of political contributions to pay debt incurred in connection with elections that took place before June 16, 1995. *Tex.Ethics Comm.Op. No. 393 (1998).*

§ 253.1611. Certain Contributions by Judicial Candidates, Officeholders, and Committees Restricted

(a) A judicial candidate or officeholder or a specific-purpose committee for supporting or opposing a judicial candidate or assisting a judicial officeholder may not use a political contribution to knowingly make political contributions that in the aggregate exceed \$100 in a calendar year to a candidate or officeholder.

(b) A judicial candidate or a specific-purpose committee for supporting or opposing a judicial candidate may not use a political contribution to knowingly make political contributions to a political committee in connection with a primary election.

(c) A judicial candidate or a specific-purpose committee for supporting or opposing a judicial candidate may not use a political contribution to knowingly make a political contribution to a political committee that, when aggregated with each other political contribution to a political committee in connection with a general election, exceeds \$500.

(d) A judicial officeholder or a specific-purpose committee for assisting a judicial officeholder may not, in any calendar year in which the office held is not on the ballot, use a political contribution to knowingly make a political contribution to a political committee that, when aggregated with each other political contribution to a political committee in that calendar year, exceeds \$250.

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(e) This section does not apply to a political contribution made to the principal political committee of the state executive committee or a county executive committee of a political party that:

(1) is made in return for goods or services, including political advertising or a campaign communication, the value of which substantially equals or exceeds the amount of the contribution; or

(2) is in an amount that is not more than the candidate's or officeholder's pro rata share of the committee's normal overhead and administrative or operating costs.

(f) For purposes of Subsection (e)(2), a candidate's or officeholder's pro rata share of a political committee's normal overhead and administrative or operating costs is computed by dividing the committee's estimated total expenses for a period by the number of candidates and officeholders to whom the committee reasonably expects to provide goods or services during that period.

(g) A person who violates this section is liable for a civil penalty not to exceed three times the amount of political contributions used in violation of this section.

Added by Acts 1997, 75th Leg., ch. 479, § 7, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 937, § 1, eff. Sept. 1, 2001.

Historical and Statutory Notes

1997 Legislation

Section 11(c) of Acts 1997, 75th Leg., ch. 479 provides:

"Section 253.1611, Election Code, as added by this Act, applies only to a political contribution made on or after September 1, 1997. A political contribution made before September 1, 1997, is governed by the law in effect on the date the contribution was made and is not aggregated with political contributions made on or after September 1, 1997."

2001 Legislation

Section 2 of Acts 2001, 77th Leg., ch. 937 provides:

"Section 253.1611, Election Code, as amended by this Act, applies only to a political contribution made on or after September 1, 2001. A political contribution made before September 1, 2001, is governed by the law in effect at the time the contribution was made."

Notes of Decisions

Candidates 3

Contributions 1, 2

In general 1

Amount of contribution 2

Contributions, amount of contribution

1. Contributions—In general

A pledge to transfer money to a political committee for political purposes is a political contribution. The date of the contribution is the date the pledge is accepted. *Tex.Ethics Comm.Op. No. 382 (1997).*

2. Contributions, amount of contribution

The amount of a political contribution is not reduced by the amount of any consideration re-

ceived in exchange for the contribution. *Tex.Ethics Comm.Op. No. 382 (1997).*

3. Candidates

An officeholder who is also a candidate, as that term is defined in Election Code section 251.001(1), is subject to the restrictions in Election Code section 253.1611(d) applicable to candidates as well as those applicable to officeholders. *Tex.Ethics Comm.Op. No. 382 (1997).*

Election Code section 253.1611 does not apply to a former judicial candidate. *Tex.Ethics Comm.Op. No. 399 (1998).*

§ 253.162. Restrictions on Reimbursement of Personal Funds and Payments on Certain Loans

(a) A judicial candidate or officeholder who makes political expenditures from the person's personal funds may not reimburse the personal funds from political contributions in amounts that in the aggregate exceed, for each election in which the person's name appears on the ballot:

(1) for a statewide judicial office, \$100,000; or

(2) for an office other than a statewide judicial office, five times the applicable contribution limit under Section 253.155.

(b) A judicial candidate or officeholder who accepts one or more political contributions in the form of loans, including an extension of credit or a guarantee of a loan or extension of credit, from one or more persons related to the candidate or officeholder within the second degree by consanguinity, as determined under Subchapter B, Chapter 573, Government Code,¹ may not use political contributions to repay the loans.

(c) A person who is both a candidate and an officeholder may reimburse the person's personal funds only in one capacity.

(d) A person who violates this section is liable for a civil penalty not to exceed three times the amount by which the reimbursement made in violation of this section exceeds the applicable limit prescribed by Subsection (a).

Added by Acts 1995, 74th Leg., ch. 763, § 1, eff. June 16, 1995.

¹ V.T.C.A., Government Code § 573.021 et seq.

Historical and Statutory Notes

1995 Legislation

For application provision of the 1995 Act, see notes following V.T.C.A., Election Code § 253.151.

Notes of Decisions

Bank loans 3
Construction and application 1
Interest 2

1. Construction and application

Election Code § 253.162(b) does not apply to the repayment of a loan made before June 16, 1995. Tex.Ethics Comm.Op. No. 350 (1996).

2. Interest

A candidate or officeholder may use political contributions to pay interest to himself or herself at a commercially reasonable rate in connection with political expenditures made from the candi-

date's or officeholder's personal funds if the candidate or officeholder properly reports the political expenditures from personal funds and indicates on the report that he or she intends to pay reimbursement with interest. The report must also set out the rate at which the candidate or officeholder will pay himself or herself interest. Tex.Ethics Comm. Op. No. 375 (1997).

3. Bank loans

A candidate's use of political contributions to repay a bank loan does not count toward the limit on reimbursement set out in Election Code section 253.162. Tex.Ethics Comm.Op. No. 389 (1998).

§ 253.163. Notice Required for Certain Political Expenditures

(a) A person other than a candidate, officeholder, or the principal political committee of the state executive committee or a county executive committee of a political party may not make political expenditures that in the aggregate exceed \$5,000 for the purpose of supporting or opposing a candidate for an office other than a statewide judicial office or assisting such a candidate as an officeholder unless the person files with the authority with whom a campaign treasurer appointment by a candidate for the office is required to be filed a written declaration of the person's intent to make expenditures that exceed the limit prescribed by this subsection.

(b) A person other than a candidate, officeholder, or the principal political committee of the state executive committee or a county executive committee of a political party may not make political expenditures that in the aggregate exceed \$25,000 for the purpose of supporting or opposing a candidate for a statewide judicial office or assisting such a candidate as an officeholder unless the person files with the commission a written declaration of the person's intent to make expenditures that exceed the limit prescribed by this subsection.

(c) A declaration under Subsection (a) or (b) must be filed not later than the earlier of:

(1) the date the person makes the political expenditure that causes the person to exceed the limit prescribed by Subsection (a) or (b); or

(2) the 60th day before the date of the election in connection with which the political expenditures are intended to be made.

(d) A declaration received under Subsection (a) or (b) shall be filed with the records of each judicial candidate or officeholder on whose behalf the person filing the declaration intends to make political expenditures. If the person intends to make only political expenditures

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opposing a judicial candidate, the declaration shall be filed with the records of each candidate for the office.

(e) An expenditure made by a political committee or other association that consists only of costs incurred in contacting the committee's or association's membership may be made without the declaration required by Subsection (a) or (b).

(f) For purposes of this section, a person who makes a political expenditure benefitting more than one judicial candidate or judicial officeholder shall, in accordance with rules adopted by the commission, allocate a portion of the expenditure to each candidate or officeholder whom the expenditure benefits in proportion to the benefit received by that candidate or officeholder. For purposes of this subsection:

(1) a political expenditure for supporting judicial candidates or assisting judicial officeholders benefits each candidate or officeholder supported or assisted; and

(2) a political expenditure for opposing a judicial candidate benefits each opponent of the candidate.

(g) A person who violates this section is liable for a civil penalty not to exceed three times the amount of the political expenditures made in violation of this section.

Added by Acts 1995, 74th Leg., ch. 763, § 1, eff. June 16, 1995.

Historical and Statutory Notes

1995 Legislation

For severance provision of the 1995 Act, see notes following V.T.C.A., Election Code § 253.155.

For application provision of the 1995 Act, see notes following V.T.C.A., Election Code § 253.151.

§ 253.164. Voluntary Compliance

(a) When a person becomes a candidate for a judicial office, the person shall file with the authority with whom the candidate's campaign treasurer appointment is required to be filed:

(1) a sworn declaration of compliance stating that the person voluntarily agrees to comply with the limits on expenditures prescribed by this subchapter; or

(2) a written declaration of the person's intent to make expenditures that exceed the limits prescribed by this subchapter.

(b) The limits on contributions and on reimbursement of personal funds prescribed by this subchapter apply to complying candidates unless suspended as provided by Section 253.165 or 253.170. The limits on contributions and on reimbursement of personal funds prescribed by this subchapter apply to noncomplying candidates regardless of whether the limits on contributions, expenditures, and reimbursement of personal funds are suspended for complying candidates.

(c) A judicial candidate may not knowingly accept a campaign contribution or make or authorize a campaign expenditure before the candidate files a declaration under Subsection (a).

(d) A person who violates Subsection (c) is liable for a civil penalty not to exceed three times the amount of the political contributions or political expenditures made in violation of this section.

Added by Acts 1995, 74th Leg., ch. 763, § 1, eff. June 16, 1995.

Historical and Statutory Notes

1995 Legislation

For severance provision of the 1995 Act, see notes following V.T.C.A., Election Code § 253.155.

For application provision of the 1995 Act, see notes following V.T.C.A., Election Code § 253.151.

Notes of Decisions

In general 1

release the candidate's opponent from compliance with any of the restrictions in the Judicial Campaign Fairness Act. Tex.Ethics Comm.Op. No. 323 (1996).

1. In general

A judicial candidate's failure to file a declaration of intent under Election Code § 253.164 does not

§ 253.165. Effect of Noncomplying Candidate

(a) A complying candidate or a specific-purpose committee for supporting a complying candidate is not required to comply with the limits on contributions, expenditures, and the reimbursement of personal funds prescribed by this subchapter if another person becomes a candidate for the same office and:

- (1) files a declaration of intent to exceed the limits on expenditures under Section 253.164(a)(2);
- (2) fails to file a declaration of compliance under Section 253.164(a)(1) or a declaration of intent under Section 253.164(a)(2);
- (3) files a declaration of compliance under Section 253.164(a)(1) but later exceeds the limits on expenditures; or
- (4) violates Section 253.173 or 253.174.

(b) The executive director of the commission shall issue an order suspending the limits on contributions and expenditures for a specific office not later than the fifth day after the date the executive director determines that:

- (1) a person has become a candidate for that office and:
 - (A) has filed a declaration of intent to exceed the limits on expenditures under Section 253.164(a)(2); or
 - (B) has failed to file a declaration of compliance under Section 253.164(a)(1) or a declaration of intent under Section 253.164(a)(2);
- (2) a complying candidate for that office has exceeded the limit on expenditures prescribed by this subchapter; or
- (3) a candidate for that office has violated Section 253.173 or 253.174.

(c) A county clerk who receives a declaration of intent to exceed the limits on expenditures under Section 253.164(a)(2) shall deliver a copy of the declaration to the executive director of the commission not later than the fifth day after the date the county clerk receives the declaration.

(d) A county clerk who receives a campaign treasurer appointment in connection with a judicial office and does not receive a declaration of compliance under Section 253.164(a)(1) or a declaration of intent to exceed the limits on expenditures under Section 253.164(a)(2) shall deliver a copy of the campaign treasurer appointment and a written notice of the candidate's failure to file a declaration of compliance or a declaration of intent to the executive director of the commission not later than the fifth day after the date the county clerk receives the campaign treasurer appointment.

(e) A county clerk who receives a written allegation that a complying candidate has exceeded the limit on expenditures or that a candidate has engaged in conduct prohibited by Section 253.173 or 253.174 shall deliver a copy of the allegation to the executive director of the commission not later than the fifth day after the date the county clerk receives the allegation. The county clerk shall, at no cost to the commission, deliver to the executive director by mail or telephonic facsimile machine copies of documents relevant to the allegation not later than 48 hours after the executive director requests the documents.

(f) A county clerk is required to act under Subsection (c), (d), or (e) only in connection with an office for which a campaign treasurer appointment is required to be filed with that county clerk.

Added by Acts 1995, 74th Leg., ch. 763, § 1, eff. June 16, 1995. Amended by Acts 1997, 75th Leg., ch. 479, § 8, eff. Sept. 1, 1997.

Historical and Statutory Notes

1995 Legislation For application provision of the 1995 Act, see notes following V.T.C.A., Election Code § 253.151.
For severance provision of the 1995 Act, see notes following V.T.C.A., Election Code § 253.155.

§ 253.166. **Benefit to Complying Candidate**

(a) A complying candidate is entitled to state on political advertising as provided by Section 255.008 that the candidate complies with the *Judicial Campaign Fairness Act*, regardless of whether the limits on contributions, expenditures, and the reimbursement of personal funds are later suspended.

(b) A noncomplying candidate is not entitled to the benefit provided by this section.

Added by Acts 1995, 74th Leg., ch. 763, § 1, eff. June 16, 1995.

Historical and Statutory Notes

1995 Legislation For application provision of the 1995 Act, see notes following V.T.C.A., Election Code § 253.151.
For severance provision of the 1995 Act, see notes following V.T.C.A., Election Code § 253.155.

§ 253.167. **Certification of Population; Notice of Contribution and Expenditure Limits**

(a) For purposes of this subchapter only, not later than June 1 of each odd-numbered year, the secretary of state shall:

(1) deliver to the commission a written certification of the population of each judicial district for which a candidate for judge or justice must file a campaign treasurer appointment with the commission; and

(2) deliver to the county clerk of each county a written certification of the county's population, if the county:

(A) comprises an entire judicial district under Chapter 26, Government Code; or

(B) has a statutory county court or statutory probate court, other than a multicounty statutory county court created under Subchapter D, Chapter 25, Government Code.¹

(b) On receipt of the certification of population under Subsection (a), the commission or county clerk, as appropriate, shall make available to each candidate for an office covered by this subchapter written notice of the contribution and expenditure limits applicable to the office the candidate seeks.

Added by Acts 1995, 74th Leg., ch. 763, § 1, eff. June 16, 1995.

¹ V.T.C.A., Government Code § 25.2601 et seq.

Historical and Statutory Notes

1995 Legislation For application provision of the 1995 Act, see notes following V.T.C.A., Election Code § 253.151.
For severance provision of the 1995 Act, see notes following V.T.C.A., Election Code § 253.155.

§ 253.168. **Expenditure Limits**

(a) For each election in which the candidate is involved, a complying candidate may not knowingly make or authorize political expenditures that in the aggregate exceed:

(1) for a statewide judicial office, \$2 million;

(2) for the office of chief justice or justice, court of appeals:

(A) \$500,000, if the population of the judicial district is more than one million; or

(B) \$350,000, if the population of the judicial district is one million or less; or

(3) for an office other than an office covered by Subdivision (1) or (2):

(A) \$350,000, if the population of the judicial district is more than one million;

(B) \$200,000, if the population of the judicial district is 250,000 to one million; or

(C) \$100,000, if the population of the judicial district is less than 250,000.

(b) A person who violates this section is liable for a civil penalty not to exceed three times the amount by which the political expenditures made in violation of this section exceed the applicable limit prescribed by Subsection (a).

Added by Acts 1995, 74th Leg., ch. 763, § 1, eff. June 16, 1995. Amended by Acts 1997, 75th Leg., ch. 479, § 9, eff. Sept. 1, 1997.

Historical and Statutory Notes

1995 Legislation

For severance provision of the 1995 Act, see notes following V.T.C.A., Election Code § 253.155.

For application provision of the 1995 Act, see notes following V.T.C.A., Election Code § 253.151.

Notes of Decisions

In general 1

Campaign Fairness Act, the primary election and the general election are considered separate elections. Tex.Ethics Comm.Op. No. 302 (1996).

1. In general

For purposes of the limits on expenditures and reimbursement of personal funds in the Judicial

§ 253.169. Expenditure by Certain Committees Considered Expenditure by Candidate

(a) For purposes of Section 253.168, an expenditure by a specific-purpose committee for the purpose of supporting a candidate, opposing the candidate's opponent, or assisting the candidate as an officeholder is considered to be an expenditure by the candidate unless the candidate, in an affidavit filed with the authority with whom the candidate's campaign treasurer appointment is required to be filed, states that the candidate's campaign, including the candidate, an aide to the candidate, a campaign officer, or a campaign consultant of the candidate, has not directly or indirectly communicated with the committee in regard to a strategic matter, including polling data, advertising, or voter demographics, in connection with the candidate's campaign.

(b) This section applies only to an expenditure of which the candidate or officeholder has notice.

(c) An affidavit under this section shall be filed with the next report the candidate or officeholder is required to file under Chapter 254 following the receipt of notice of the expenditure.

Added by Acts 1995, 74th Leg., ch. 763, § 1, eff. June 16, 1995. Amended by Acts 1997, 75th Leg., ch. 479, § 10, eff. Sept. 1, 1997.

Historical and Statutory Notes

1995 Legislation

For severance provision of the 1995 Act, see notes following V.T.C.A., Election Code § 253.155.

For application provision of the 1995 Act, see notes following V.T.C.A., Election Code § 253.151.

1997 Legislation

Section 11(b) of Acts 1997, 75th Leg., ch. 479 provides:

"Sections 253.157 and 253.169, Election Code, as amended by this Act, apply only to a political contribution accepted or political expenditure made on or after September 1, 1997. A political contribution accepted or political expenditure made before September 1, 1997, is governed by the law in effect on the date the contribution was accepted or the expenditure was made and is not aggregated with political contributions accepted or political expenditures made on or after September 1, 1997."

§ 253.170. Effect of Certain Political Expenditures

(a) A complying candidate for an office other than a statewide judicial office or a specific-purpose committee for supporting such a candidate is not required to comply with the limits on contributions, expenditures, and the reimbursement of personal funds prescribed by this subchapter if a person other than the candidate's opponent or the principal political committee of the state executive committee or a county executive committee of a political party makes political expenditures that in the aggregate exceed \$5,000 for the purpose of

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supporting the candidate's opponent, opposing the candidate, or assisting the candidate's opponent as an officeholder.

(b) A complying candidate for a statewide judicial office or a specific-purpose committee for supporting such a candidate is not required to comply with the limits on contributions, expenditures, and the reimbursement of personal funds prescribed by this subchapter if a person other than the candidate's opponent or the principal political committee of the state executive committee or a county executive committee of a political party makes political expenditures that in the aggregate exceed \$25,000 for the purpose of supporting the candidate's opponent, opposing the candidate, or assisting the candidate's opponent as an officeholder.

(c) The executive director of the commission shall issue an order suspending the limits on contributions, expenditures, and the reimbursement of personal funds for a specific office not later than the fifth day after the date the executive director determines that:

- (1) a declaration of intent to make expenditures that exceed the limit prescribed by Subsection (a) or (b) is filed in connection with the office as provided by Section 253.163; or
- (2) a political expenditure that exceeds the limit prescribed by Subsection (a) or (b) has been made.

(d) A county clerk who receives a declaration of intent to make expenditures that exceed the limit prescribed by Subsection (a) or (b) shall deliver a copy of the declaration to the executive director of the commission not later than the fifth day after the date the county clerk receives the declaration. A county clerk who receives a written allegation that a person has made a political expenditure that exceeds the limit prescribed by Subsection (a) or (b) shall deliver a copy of the allegation to the executive director not later than the fifth day after the date the county clerk receives the allegation. The county clerk shall, at no cost to the commission, deliver to the executive director by mail or telephonic facsimile machine copies of documents relevant to the allegation not later than 48 hours after the executive director requests the documents. A county clerk is required to act under this subsection only in connection with an office for which a campaign treasurer appointment is required to be filed with that county clerk.

(e) An expenditure made by a political committee or other association that consists only of costs incurred in contacting the committee's or association's membership does not count towards the limit prescribed by Subsection (a) or (b).

Added by Acts 1995, 74th Leg., ch. 763, § 1, eff. June 16, 1995.

Historical and Statutory Notes

1995 Legislation

For severance provision of the 1995 Act, see notes following V.T.C.A., Election Code § 253.155.

For application provision of the 1995 Act, see notes following V.T.C.A., Election Code § 253.151.

§ 253.171. Contribution from or Direct Campaign Expenditure by Political Party

(a) Except as provided by Subsection (b), a political contribution to or a direct campaign expenditure on behalf of a complying candidate that is made by the principal political committee of the state executive committee or a county executive committee of a political party is considered to be a political expenditure by the candidate for purposes of the expenditure limits prescribed by Section 253.168.

(b) Subsection (a) does not apply to a political expenditure for a generic get-out-the-vote campaign or for a written list of two or more candidates that:

- (1) identifies the party's candidates by name and office sought, office held, or photograph;
- (2) does not include any reference to the judicial philosophy or positions on issues of the party's judicial candidates; and
- (3) is not broadcast, cablecast, published in a newspaper or magazine, or placed on a billboard.

Added by Acts 1995, 74th Leg., ch. 763, § 1, eff. June 16, 1995.

Historical and Statutory Notes

1995 Legislation

For severance provision of the 1995 Act, see notes following V.T.C.A., Election Code § 253.155.

For application provision of the 1995 Act, see notes following V.T.C.A., Election Code § 253.151.

§ 253.172. Restriction on Exceeding Expenditure Limits

(a) A candidate who files a declaration of compliance under Section 253.164(a)(1) and who later files a declaration of intent to exceed the limits on expenditures under Section 253.164(a)(2) or a specific-purpose committee for supporting such a candidate may not make a political expenditure that causes the person to exceed the applicable limit on expenditures prescribed by Section 253.168 before the 60th day after the date the candidate files the declaration of intent to exceed the limits on expenditures.

(b) A person who violates this section is liable for a civil penalty not to exceed three times the amount of political expenditures made in violation of this section.

Added by Acts 1995, 74th Leg., ch. 763, § 1, eff. June 16, 1995.

Historical and Statutory Notes

1995 Legislation

For application provision of the 1995 Act, see notes following V.T.C.A., Election Code § 253.151.

§ 253.173. Agreement to Evade Limits Prohibited

(a) A complying candidate may not:

(1) solicit a person to enter a campaign as a noncomplying candidate opposing the complying candidate; or

(2) enter into an agreement under which a person enters a campaign as a noncomplying candidate opposing the complying candidate.

(b) A candidate who violates this section is considered to be a noncomplying candidate.

Added by Acts 1995, 74th Leg., ch. 763, § 1, eff. June 16, 1995.

Historical and Statutory Notes

1995 Legislation

For application provision of the 1995 Act, see notes following V.T.C.A., Election Code § 253.155.

For application provision of the 1995 Act, see notes following V.T.C.A., Election Code § 253.151.

§ 253.174. Misrepresentation of Opponent's Compliance with or Violation of Subchapter Prohibited

(a) A candidate for judicial office may not knowingly misrepresent that an opponent of the candidate:

(1) is a noncomplying candidate; or

(2) has violated this subchapter.

(b) A candidate who violates this section is considered to be a noncomplying candidate.

Added by Acts 1995, 74th Leg., ch. 763, § 1, eff. June 16, 1995.

Historical and Statutory Notes

1995 Legislation

For application provision of the 1995 Act, see notes following V.T.C.A., Election Code § 253.151.

§ 253.175. Judicial Campaign Fairness Fund

(a) The judicial campaign fairness fund is a special account in the general revenue fund.

(b) The judicial campaign fairness fund consists of:

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- (1) penalties recovered under Section 253.176; and
- (2) any gifts or grants received by the commission under Subsection (e).
- (c) The judicial campaign fairness fund may be used only for:
 - (1) voter education projects that relate to judicial campaigns; and
 - (2) payment of costs incurred in imposing civil penalties under this subchapter.
- (d) To the extent practicable, the fund shall be permitted to accumulate until the balance is sufficient to permit the publication of a voter's guide that lists candidates for judicial office, their backgrounds, and similar information. The commission shall implement this subsection and shall adopt rules under which a candidate must provide information to the commission for inclusion in the voter's guide. In providing the information, the candidate shall comply with applicable provisions of the Code of Judicial Conduct. The voter's guide must, to the extent practicable, indicate whether each candidate is a complying candidate or noncomplying candidate, based on declarations filed under Section 253.164 or determinations by the executive director or the county clerk, as appropriate, under Section 253.165. The listing of a noncomplying candidate may not include any information other than the candidate's name and must include a statement that the candidate is not entitled to have complete information about the candidate included in the guide.
- (e) The commission may accept gifts and grants for the purposes described by Subsections (c)(1) and (d). Funds received under this subsection shall be deposited to the credit of the judicial campaign fairness fund.
- (f) The judicial campaign fairness fund is exempt from Sections 403.094 and 403.095, Government Code.

Added by Acts 1995, 74th Leg., ch. 763, § 1, eff. June 16, 1995.

Historical and Statutory Notes

1995 Legislation

For application provision of the 1995 Act, see notes following V.T.C.A., Election Code § 253.151.

§ 253.176. Civil Penalty

- (a) The commission may impose a civil penalty against a person only after a formal hearing as provided by Subchapter E, Chapter 571, Government Code.¹
- (b) The commission shall base the amount of the penalty on:
 - (1) the seriousness of the violation;
 - (2) the history of previous violations;
 - (3) the amount necessary to deter future violations; and
 - (4) any other matter that justice may require.
- (c) A penalty collected under this section shall be deposited to the credit of the judicial campaign fairness fund.

Added by Acts 1995, 74th Leg., ch. 763, § 1, eff. June 16, 1995.

¹ V.T.C.A., Government Code § 571.121 et seq.

Historical and Statutory Notes

1995 Legislation

For application provision of the 1995 Act, see notes following V.T.C.A., Election Code § 253.151.

CHAPTER 254. POLITICAL REPORTING

SUBCHAPTER A. RECORDKEEPING

Section

254.001. Recordkeeping Required.
[Sections 254.002 to 254.030 reserved for expansion]

Section

**SUBCHAPTER B. POLITICAL REPORTING
GENERALLY**

254.031. General Contents of Reports.
254.0311. Report by Legislative Caucus.

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SUBCHAPTER C. REPORTING BY CANDIDATE

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254.0611. Additional Contents of Reports by Certain Judicial Candidates.
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254.066. Authority With Whom Reports Filed.
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254.0911. Additional Contents of Reports by Certain Judicial Officeholders.
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254.093. Semiannual Reporting Schedule for Officeholder.
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Section SUBCHAPTER E. REPORTING BY SPECIFIC-PURPOSE COMMITTEE

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254.127. Termination Report.
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SUBCHAPTER F. REPORTING BY GENERAL-PURPOSE COMMITTEE

- 254.151. Additional Contents of Reports.
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254.153. Semiannual Reporting Schedule for Committee.
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254.161. Notice to Candidate and Officeholder of Contributions and Expenditures.
254.162. Notice of Change in Committee Status.
254.163. Authority With Whom Reports Filed.
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SUBCHAPTER G. MODIFIED REPORTING PROCEDURES; \$500 MAXIMUM IN CONTRIBUTIONS OR EXPENDITURES

- 254.181. Modified Reporting Authorized.
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SUBCHAPTER H. UNEXPENDED CONTRIBUTIONS

- 254.201. Annual Report of Unexpended Contributions.
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- 254.205. Report of Disposition of Unexpended Contributions.
[Sections 254.206 to 254.230 reserved for expansion]

SUBCHAPTER I. CIVIL LIABILITY

- 254.231. Liability to Candidates.
254.232. Liability to State.

Administrative Code References

Campaign reporting and disclosure, see 1 TAC § 81.200 et seq.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

SUBCHAPTER A. RECORDKEEPING

Cross References

Corporations or labor organizations, expenditures exempt from reporting requirements under this chapter,

Communications with stockholders or members, see V.T.C.A., Election Code § 253.098.

Establishment or administration of general-purpose committees, see V.T.C.A., Election Code § 253.100.

Out-of-state political committees, limitations on contributions, see V.T.C.A., Election Code § 253.032.

§ 254.001. Recordkeeping Required

- (a) Each candidate and each officeholder shall maintain a record of all reportable activity.
- (b) Each campaign treasurer of a political committee shall maintain a record of all reportable activity.
- (c) The record must contain the information that is necessary for filing the reports required by this chapter.
- (d) A person required to maintain a record under this section shall preserve the record for at least two years beginning on the filing deadline for the report containing the information in the record.
- (e) A person who violates this section commits an offense. An offense under this section is a Class B misdemeanor.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987.

Cross References

Principal political committee of political party, reporting of contributions from corporations and labor organizations, application of this section, see V.T.C.A., Election Code § 257.003.

Punishment, Class B misdemeanor, see V.T.C.A., Penal Code § 12.22.

Notes of Decisions

Construction and application 1
 Law governing 2
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1. Construction and application

An independent candidate in general election, nominated in accordance with former Election Code, had to file statement of campaign receipts and expenditures. Op.Atty.Gen.1952, No. V-1509.

Reporting and disclosure requirements apply to contributions which labor organizations are authorized to make. Election Law Letter Advisory No. 1982-2.

There is no violation of Title 15 of the Election Code if a candidate, officeholder, or political committee transfers an anonymous contribution, which does not need to be reported, to a recognized tax-exempt charitable organization. Tex.Ethics Comm.,Op. No. 207 (1994).

A precinct chair of a political party wishing to solicit political contributions to be used on campaign activities for his party's candidates must file an appointment of campaign treasurer of a general-purpose committee before exceeding \$500 in political contributions or political expenditures. The treasurer of the committee would be required to follow the recordkeeping and reporting requirements of Chapter 254 of the Election Code. Tex.Ethics Comm.Op. No. 320 (1996).

2. Law governing

The Federal Election Campaign Act Amendments of 1974 (see, 2 U.S.C.A. § 431 et seq.) specifically preempt and supersede state campaign contribution and expenditure reporting laws, insofar as they relate to candidates for federal offices. Op.Atty.Gen.1974, No. H-483.

3. Reportable activity

If an officeholder did not establish a separate specific purpose political committee to accept contributions to defray ordinary and necessary legal expenses incurred in successfully defending criminal charges brought as a direct result of performing an activity of office but personally accepted those contributions, the officeholder was required to report those contributions on the applicable sworn statement of contributions and expenditures filed under former title 15. Election Law Opinion No. MAM-7 (1986).

4. Public information

Election returns, applications by candidates for a position on the ballot as mayor or council member, and campaign contribution and expenditure reports are public information, and the exception contained in § 3(a)(3) of the Open Records Act (Vernon's Ann.Civ.St. art. 6252-17a) does not permit such information to be withheld from public inspection. Op.Atty.Gen.1976, No. ORD-146.

"Backup records" maintained by a candidate or officeholder pursuant to Election Code § 254.001 are not public records under Title 15 of the Election Code. Tex.Ethics Comm.Op. No. 308 (1996).

[Sections 254.002 to 254.030 reserved for expansion]

SUBCHAPTER B. POLITICAL REPORTING GENERALLY

Cross References

Oaths, affidavits, and affirmations, administration by employee of Secretary of State with duties under this title, see V.T.C.A., Government Code § 602.002.

§ 254.031. General Contents of Reports

(a) Except as otherwise provided by this chapter, each report filed under this chapter must include:

(1) the amount of political contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting period by the person or committee required to file a report under this chapter, the full name and address of the person making the contributions, and the dates of the contributions;

(2) the amount of loans that are made during the reporting period for campaign or officeholder purposes to the person or committee required to file the report and that in the aggregate exceed \$50, the dates the loans are made, the interest rate, the maturity date, the type of collateral for the loans, if any, the full name and address of the person or financial institution making the loans, the full name and address, principal occupation, and name of the employer of each guarantor of the loans, the amount of the loans guaranteed by each guarantor, and the aggregate principal amount of all outstanding loans as of the last day of the reporting period;

(3) the amount of political expenditures that in the aggregate exceed \$50 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;

(4) the amount of each payment made during the reporting period from a political contribution if the payment is not a political expenditure, the full name and address of the person to whom the payment is made, and the date and purpose of the payment;

(5) the total amount or a specific listing of the political contributions of \$50 or less accepted and the total amount or a specific listing of the political expenditures of \$50 or less made during the reporting period;

(6) the total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period; and

(7) the name of each candidate or officeholder who benefits from a direct campaign expenditure made during the reporting period by the person or committee required to file the report, and the office sought or held, excluding a direct campaign expenditure that is made by the principal political committee of a political party on behalf of a slate of two or more nominees of that party.

(b) If no reportable activity occurs during a reporting period, the person required to file a report shall indicate that fact in the report.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 304, § 5.10, eff. Jan. 1, 1992.

Historical and Statutory Notes

1991 Legislation

The 1991 amendment, in subsec. (a)(2) inserted “, the maturity date, the type of collateral for the loans,” “and address,” “the full name and address, principal occupation, and name of the employer”, and “the amount of the loans guaranteed by each guarantor, and the aggregate principal amount of all outstanding loans as of the last day of the reporting period”; and added (a)(7).

For effective date and application of the 1991 act, see Historical and Statutory Notes following § 251.001.

Derivation:

V.T.C.A. Election Code, § 251.011(c)(1).

Cross References

General-purpose committees, optional monthly reports to comply with requirements under this section, see V.T.C.A., Election Code § 254.156.

Library References

Campaign contributions and expenditures, see Brooks, 35 Texas Practice § 11.22.

Notes of Decisions

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Validity of prior law 1

1. Validity of prior law

Penal provision of V.A.T.S. Election Code art. 14.08 was invalid where caption of the former Election Code act stated that it revised civil statutes and should not have been construed as repealing or affecting any existing penal law, and gave no notice that penal provisions were to be found in act. Ex parte Meyer (Cr.App. 1962) 172 Tex.Crim. 403, 357 S.W.2d 754.

V.A.T.S. Election Code, art. 14.07, did not violate a candidate's or his associates' constitutional rights of speech, association and associational privacy,

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nor did it violate any substantive due process rights of either candidates, their contributors, supporters, or recipients of campaign expenditures, nor was it vague, indefinite, uncertain, or overbroad, nor was it unconstitutional for alleged inadequacies in the caption of the Act. *Beck v. State* (Cr.App. 1979) 583 S.W.2d 338.

The exclusion of nonincumbent or nonpublic officeholders, uncontested candidates from statutory reporting requirements did not violate Texas or federal constitutional mandates to afford equal protection of the law. *Beck v. State* (Cr.App. 1979) 583 S.W.2d 338.

Since criminal penalties under the former Election Code were exacted in an area permeated with the most fundamental of First Amendment interests, the statutory scheme involved was subjected to exacting and close scrutiny. *Beck v. State* (Cr.App. 1979) 583 S.W.2d 338.

Under Election Code § 253.100, a corporation, acting alone or in concert with one or more corporations, may finance the administration of a general-purpose committee with donations from its own property. Under § 253.100 subdivision D, such contributions are not reportable as political contributions by the general-purpose committee. However, if an individual makes a contribution to a general-purpose committee, specifying that the contribution is to be used for administrative expenses only, the general-purpose committee must report the donation as it does any other political contribution. *Tex.Ethics Comm.Op. No. 132* (1993).

A corporation may pay the expenses of a forum sponsored by a political committee if the content of the forum is unrelated to activities governed by title 15 of the Election Code. The name of a corporation that designates individuals to serve on the board of a general-purpose committee must be included in the name of the political committee, whether or not the individuals designated by the corporation constitute a majority on the board. *Tex.Ethics Comm.Op. No. 168* (1993).

2. Construction and application

Where legislature amended the former Election Code subsequent to Court of Civil Appeals' construction of former V.A.T.S. Election Code, art. 14.07 governing reporting of campaign contributions and expenditures, that requirement of filing contained in art. 14.07 was mandatory while time of filing was directory, and legislature made no change in said article, legislature was presumed to have adopted such construction. *Hoeneke v. Lehman* (Civ.App. 1976) 542 S.W.2d 728.

A candidate was required to reasonably and substantially comply with provisions of V.A.T.S. Election Code, art. 14.08 pertaining to reporting of campaign contributions and expenditures as to time of filing of statement. *Hoeneke v. Lehman* (Civ.App. 1976) 542 S.W.2d 728.

Contributions made by corporations or individuals to the Austin Inaugural Committee were not subject to the campaign reporting provisions of this chapter, nor were the persons or corporations

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who made them subject to the Lobby Act [Vernon's Ann.Civ.St. art. 6252-9c (repealed; see, now, V.T.C.A. Government Code, § 305.001 et seq.)]. *Op.Atty.Gen.1974, No. H-486*.

Contributions to defray the expenses of the Republican Governors' Conference to be held in Texas were not subject to the campaign reporting provisions of this chapter unless a purpose of the conference was to become involved in elections in Texas, nor were the persons who made them subject to the Lobby Act, Vernon's Ann.Civ.St. art. 6252-9c (repealed; see, now, V.T.C.A. Government Code, § 305.001 et seq.). *Op.Atty.Gen.1979, No. MW-48*.

Under certain circumstances a legislator must report the cost of mailing a letter and voting registration applications to residents of the legislator's district. *Election Law Opinion No. DAD-52* (1982).

A specific purpose political committee for a candidate could make a contribution to another candidate; however, the committee was required to make the appropriate disclosures and file the reports required by V.A.T.S. Election Code, art. 14.01 et seq. *Election Law Opinion No. DAD-54* (1982).

A group that made expenditures for political advertisements pertaining to a referendum issue on the ballot in a primary election was subject to political funds reporting and disclosure requirements of V.A.T.S. Election Code, art. 14.01 et seq. *Election Law Opinion No. DAD-67* (1982).

Before a county political party organization could legally engage in activities that constituted acceptance of a "contribution" or making of an "expenditure", as those terms were defined in this chapter, the organization was required to file as a "political committee", and in most instances, the activities normally associated with a county political party would have corresponded to the definition under subsec. (O) of V.A.T.S. Election Code, art. 14.01 [transferred; now, subd. (15) of § 251.001], of a "general purpose political committee" and required filings with the secretary of state. *Election Law Opinion No. DAD-71* (1983).

A commercial transaction in which the purchaser does not intend the proceeds to be used or held in relation to any election will not be reported as a contribution from the purchaser, so that the proceeds obtained from a vending machine maintained by the candidate at the candidate's campaign headquarters will not constitute contributions made by the purchasers for the candidate as long as the machine charges fair market value for the merchandise and any profit realized by this operation constitutes personal funds of the candidate, and if these personal funds are then used by the candidate in the candidate's election, the candidate must report the disbursement of these funds on the applicable sworn statement as an expenditure. *Election Law Opinion No. JWF-22* (1983).

It was permissible under V.A.T.S. Election Code, art. 14.01 et seq., for a Texas general purpose political committee to make a contribution to

a federal candidate or office-holder, and if made as a disbursement from contributions under art. 14.01 et seq. of the committee, it was reportable under art. 14.01 et seq. by the committee as a payment that was not an expenditure; contributions to a federal candidate or office-holder were subject to the requirements of federal law. Election Law Opinion No. JWF-29 (1984).

Contributions accepted by a candidate to help pay legal fees incurred because of an election contest had to be reported. Election Law Opinion No. JWF-33 (1984).

A member of the legislature could have accepted a donation from an individual of a small cassette tape recorder and cassette tape recordings of an individual reading the Bible because they did not constitute an economic gain or advantage and thus were not a "benefit" under subd. (5) of V.T.C.A. Penal Code, § 36.01; however, under certain circumstances reporting of the donation would have been required as a contribution in accordance with par. (D)(2) of V.A.T.S. Election Code, art. 14.01 [transferred; now, par. (4)(B) of § 251.001]. State Ethics Advisory Commission Opinion 1984-14.

3. Law governing

The Federal Election Campaign Act Amendments of 1974 (see, 2 U.S.C.A. § 431 et seq.) specifically preempt and supersede state campaign contribution and expenditure reporting laws, insofar as they relate to candidates for federal offices. Op. Atty. Gen. 1974, No. H-433.

4. Information requested

Under V.A.T.S. Election Code, art. 14.07, there had to be substantial relationship between the governmental interests sought to be promoted and the information requested. *Beck v. State* (Cr.App. 1979) 583 S.W.2d 338.

5. Source of contribution

Once a pledged contribution has been properly reported, statute does not concern itself with how the pledgor actually obtains the funds necessary to satisfy that pledge, unless such activity also constitutes the making of a contribution, so that if the pledgor obtains the funds necessary to satisfy the obligation the pledgor made to the candidate from a purely commercial transaction, no further disclosure of this activity is required by this chapter; however, if a third party transfers more than \$50 to the pledgor with the intent that such funds be used or held for some election and the pledgor receives the funds with such intent, a contribution has been made by the third party, and the amount of this contribution, date of acceptance by the recipient, and name and address of the third party must be disclosed. Election Law Opinion No. JWF-22 (1983).

If an original pledgor to a candidate is, in fact, collecting contributions from other persons so as to constitute a political committee, the recipient candidate must report the pledged contribution as a contribution from a political committee as opposed to a contribution from the individual pledgor and the political committee must reveal on the applica-

ble sworn statement the full name and address of each person from whom the pledgor collected the contributions, the amount of each contribution, and the date of acceptance by the committee of each individual contribution. Election Law Opinion No. JWF-22 (1983).

A specific-purpose political committee supporting a candidate has an identity separate from the candidate. If the candidate makes a transfer to the committee, the committee must report a contribution from the candidate. *Tex. Ethics Comm. Op. No. 271* (1995).

A candidate or officeholder is not required to include political expenditures from personal funds under "aggregate principal amount of all outstanding loans as of the last day of the reporting period." *Tex. Ethics Comm. Op. No. 349* (1996).

5.4. Anonymous contributions

There is no violation of Title 15 of the Election Code if a candidate, officeholder, or political committee transfers an anonymous contribution, which does not need to be reported, to a recognized tax-exempt charitable organization. *Tex. Ethics Comm. Op. No. 207* (1994).

5.5. Restricted use contributions

If funds are given to a political committee with the restriction that they be used to hire a lobbyist to work on legislative matters, the political committee is not required to report the funds as a political contribution. If, on the other hand, funds are not restricted to uses not regulated by Title 15, the funds must be reported as a political contribution. *Tex. Ethics Comm. Op. No. 131* (1993).

6. Investment income

A political committee could invest contributions which it received in an interest-bearing bank account and interest earned thereon would become reportable under V.A.T.S. Election Code, art. 14.01 et seq., as a "contribution" upon the occurrence of a decision to obligate or make such interest available for the political committee's intended or actual use or holding for some election. Election Law Opinion No. DAD-70 (1983).

Any contributions invested in investments designed to earn a positive return or portions thereof lost by the investing political committee was reportable under V.A.T.S. Election Code, art. 14.01 et seq., as a payment that was not an expenditure made from a contribution. Election Law Opinion No. DAD-72 (1983).

Even though a campaign has an amount of interest in excess of \$50 accrued but not payable until a subsequent reporting period, an interest payment becomes reportable as an expenditure for the reporting period in which such interest accrues, if the amount of interest is ascertainable by the end of the reporting period and not when the interest is actually paid. Election Law Opinion No. JWF-22 (1983).

Interest or other earnings on invested contributions became reportable as "contributions" under V.A.T.S. Election Code, art. 14.07, upon obligation

or use of earnings for that purpose and any portion of invested contributions which was lost was reportable as "payment that is not an expenditure"; however, investment of contributions did not constitute reportable contribution, expenditure, or payment that was not an expenditure. Election Law Opinion No. JWF-34 (1984).

7. In-kind contributions

A recipient candidate reports the fair market value of an in-kind contribution on the applicable sworn statement as both a contribution and a simultaneous expenditure; the proceeds obtained from a subsequent sale of this item will not be reported as a contribution if the sale was a commercially reasonable transaction for fair market value. Election Law Opinion No. JWF-22 (1983).

Where an in-kind contribution of property is properly reported as a contribution at its fair market value and a simultaneous in-kind expenditure, and later the property is sold for cash in an amount exceeding \$50 that approximates the fair market value of the property at the time it is sold, the proceeds of the sale are not reportable as there has been no contribution of additional value to the campaign; however, if the candidate or political committee sells the property and the purchaser buys the property at an inflated price the inference is raised that the parties intended the proceeds obtained from the sale to be used or held for some election and the recipient candidate or political committee must report the difference between the amount paid and the fair market value of the property as a contribution from the purchaser. Election Law Opinion No. JWF-22 (1983).

A legislator could accept a contribution of food, liquor, and other beverages for use in the legislator's office if the legislator reported the acceptance of such office-holder contribution in accordance with V.A.T.S. Election Code, art. 14.01, but a legislator could not accept a contribution of food, liquor, and other beverages during the period beginning 30 days before the regular session and continuing through the day of final adjournment; the legislator could accept those incidental donations of food, liquor, and other beverages which the legislator accepted only as a matter of common courtesy. State Ethics Advisory Commission Opinion 1984-8.

7.6. Direct campaign expenditures

A candidate is required to report a direct campaign expenditure, as opposed to a contribution, made to support him or her only if the candidate receives notice under sections 253.062 (a) (1), 254.128 (a), or 254.161 of the Election Code. Tex.Ethics Comm.Op. No. 331 (1996).

8. Loans

V.A.T.S. Election Code, art. 14.01 et seq., did not require the terms of a loan of money to a campaign to be disclosed on a sworn statement, so that under par. (C)(1)(a) of V.A.T.S. Election Code art. 14.07, the candidate who reported a loan of more than \$50 that did not constitute a contribution need only have disclosed the full name and complete address of the person from whom the candidate

received the loan, the date of acceptance, and the principal amount of the loan. Election Law Opinion No. JWF-22 (1983).

Although a loan described in subsec. (C) of V.A.T.S. Election Code, art. 14.06 [transferred; now, subsec. (c) of § 251.010] was not a contribution from the lending institution, a recipient candidate was required to disclose on the sworn statement covering that reporting period the full name and complete address of each person who guaranteed the loan, regardless of the amount guaranteed by each person, the date and total value of the loan or the value of each guarantee. Election Law Opinion No. JWF-22 (1983).

A loan made to a candidate for use in the candidate's campaign by a corporation which was legally engaged in the business of lending money and which had conducted such business continuously for more than one year prior to the making of such loan was not a contribution from the lending institution or bank under V.A.T.S. Election Code, art. 14.06 (transferred; see, now, § 251.010), provided that the loan was made in the due course of business in accordance with the applicable banking laws and regulations, but once the candidate expended the proceeds from this loan for political purposes under subd. (E) of V.A.T.S. Election Code, art. 14.01 [transferred; now subd. (5) of § 251.001], the candidate would have reported such disbursements as expenditures on the applicable sworn statement. Election Law Opinion No. JWF-22 (1983).

Subsequent loan by candidate of proceeds of personal bank loan to political committee constituted "expenditure" reportable by candidate under subd. (C)(1) of V.A.T.S. Election Code, art. 14.07 and "contribution" reportable by committee under art. 14.07(C)(1)(a). State Ethics Advisory Commission Opinion 1984-16.

Subsequent loan by office-holder of proceeds of personal bank loan to political committee did not require reporting by office-holder as office-holder expenditure but did constitute "contribution" reportable by committee under subd. (D)(1) of V.A.T.S. Election Code, art. 14.07. State Ethics Advisory Commission Opinion 1984-16.

Loan made in due course of business from bank to candidate or office-holder was not required to be reported under subd. (C)(1)(a) of V.A.T.S. Election Code, art. 14.07 if no other person assisted candidate or office-holder in obtaining the loan. State Ethics Advisory Commission Opinion 1984-16.

9. Time of reporting

A contribution becomes reportable upon the recipient's decision to accept the contribution, and this decision may occur before, after, or at the time of receipt; once the candidate accepts an offer of a definite amount of money, the candidate will report this amount as a contribution on the sworn statement as of the day of acceptance, and there is no requirement to disclose the subsequent receipt of this money. Election Law Opinion No. JWF-22 (1983).

For purposes of V.A.T.S. Election Code, art. 14.01 et seq., an expenditure was not reportable until the amount was readily determinable or, if the character of the expenditure was such that normal business practice was not to disclose the amount until the date of receipt of the next periodic bill, until the date of such receipt, and once an obligation was reported as an expenditure, actual payment of the obligation did not trigger additional reporting requirements under art. 14.01 et seq. Election Law Opinion No. JWF-22 (1983).

If the total amount of a guarantee on a loan is ascertainable at the time the promise to guarantee was made and accepted, the candidate must report this information on the sworn statement covering that reporting period and subsequent payment by the guarantor is not a reportable event; however, if the total amount of interest to be paid by the guarantor is not ascertainable until receipt of the bill, the candidate will report the name and address of the guarantor, date of receipt of bill, and amount of payment required during that reporting period on each applicable sworn statement. Election Law Opinion No. JWF-22 (1983).

An agreement to transfer money in the future as a contribution is referred to as a "pledge" in Ethics Commission Rules and Forms. A pledge accepted by a candidate or office holder must be reported on the report covering the period in which the pledge is accepted, not when the actual transfer of money or goods is made. Once a pledge is reported, it is not necessary to report the contribution a second time when the transfer is made. Tex.Ethics Comm.Op. No. 231 (1993).

10. Out-of-state expenditures

General-purpose political committees are not required to report political expenditures made in connection with out-of-state campaigns, officeholders, or measures on reports filed under Chapter 254 of the Texas Election Code. Tex.Ethics Comm.Op. No. 208 (1994).

11. Left-over materials

A candidate is not required to report his use in a current campaign of materials paid for and reported in connection with a previous campaign. Tex.Ethics Comm.Op. No. 390 (1998).

§ 254.0311. Report by Legislative Caucus

(a) A legislative caucus shall file a report of contributions and expenditures as required by this section.

(b) A report filed under this section must include:

(1) the amount of contributions from each person, other than a caucus member, that in the aggregate exceed \$50 and that are accepted during the reporting period by the legislative caucus, the full name and address of the person making the contributions, and the dates of the contributions;

(2) the amount of loans that are made during the reporting period to the legislative caucus and that in the aggregate exceed \$50, the dates the loans are made, the interest rate, the maturity date, the type of collateral for the loans, if any, the full name and address of the person or financial institution making the loans, the full name and address, principal occupation, and name of the employer of each guarantor of the loans, the amount of the loans guaranteed by each guarantor, and the aggregate principal amount of all outstanding loans as of the last day of the reporting period;

(3) the amount of expenditures that in the aggregate exceed \$50 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;

(4) the total amount or a specific listing of contributions of \$50 or less accepted from persons other than caucus members and the total amount or a specific listing of expenditures of \$50 or less made during the reporting period; and

(5) the total amount of all contributions accepted, including total contributions from caucus members, and the total amount of all expenditures made during the reporting period.

(c) If no reportable activity occurs during a reporting period, the legislative caucus shall indicate that fact in the report.

(d) A legislative caucus shall file with the commission two reports for each year.

(e) The first report shall be filed not later than July 15. The report covers the period beginning January 1 or the day the legislative caucus is organized, as applicable, and continuing through June 30.

(f) The second report shall be filed not later than January 15. The report covers the period beginning July 1 or the day the legislative caucus is organized, as applicable, and continuing through December 31.

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(g) A legislative caucus shall maintain a record of all reportable activity under this section and shall preserve the record for at least two years beginning on the filing deadline for the report containing the information in the record.

(h) In this section, "legislative caucus" has the meaning assigned by Section 253.0341.

Added by Acts 1995, 74th Leg., ch. 43, § 2, eff. Aug. 28, 1995.

§ 254.032. Nonreportable Personal Travel Expense

A political contribution consisting of personal travel expense incurred by an individual is not required to be reported under this chapter if the individual receives no reimbursement for the expense.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987.

Cross References

Principal political committee of political party, reporting of contributions from corporations and labor organizations, application of this and following sections, see V.T.C.A., Election Code § 257.003.

§ 254.033. Nonreportable Personal Service

A political contribution consisting of an individual's personal service is not required to be reported under this chapter if the individual receives no compensation for the service.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987.

Notes of Decisions

Construction and application 1

1. Construction and application

Campaign treasurer's services were not a reportable contribution and thus candidate/officeholder did not violate Election Code by not disclosing in campaign finance report a verbal agreement to pay treasurer a fair and reasonable fee for campaign services if and when sufficient funds were left in campaign account; political expenditure is not made until amount is readily determinable by person making expenditure. Op. Atty. Gen. 1997, LO 97-094.

The uncompensated provision of personal services in connection with a campaign is not an

expenditure required to be reported under Chapter 305 of the Government Code, rather, it is a political contribution subject to Title 15 of the Election Code. Tex. Ethics Comm. Op. No. 49 (1992).

A contribution of personal services to a candidate or officeholder is not reportable because Election Code § 254.033 specifically excepts contributions of personal services from the reporting requirements. The Election Code does not, however, except from the reporting requirements contributions in the form of payment of expenditures made in connection with rendering personal services. Therefore, such payments are reportable. Tex. Ethics Comm. Op. No. 360 (1997).

§ 254.034. Time of Accepting Contribution

(a) A determination to accept or refuse a political contribution that is received by a candidate, officeholder, or political committee shall be made not later than the end of the reporting period during which the contribution is received.

(b) If the determination to accept or refuse a political contribution is not made before the time required by Subsection (a), for purposes of this chapter, the contribution is considered to have been accepted on the last day of that reporting period.

(c) A political contribution that is received but not accepted shall be returned to the contributor not later than the 30th day after the deadline for filing a report for the reporting period during which the contribution is received. A contribution not returned within that time is considered to be accepted.

(d) A candidate, officeholder, or political committee commits an offense if the person knowingly fails to return a political contribution as required by Subsection (c).

(e) An offense under this section is a Class A misdemeanor.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 2, § 7.16, eff. Aug. 28, 1989.

Historical and Statutory Notes

1989 Legislation

Derivation:

The 1989 amendment in subsec. (c) substituted "report" for "statement" in the first sentence.

V.T.C.A. Election Code, § 251.011(c)(5).

Cross References

Punishment, Class A misdemeanor, see V.T.C.A., Penal Code § 12.21.

Notes of Decisions

Return of contribution 2
Time of reporting 1

1. Time of reporting

A contribution becomes reportable upon the recipient's decision to accept the contribution, and this decision may occur before, after, or at the time of receipt; once the candidate accepts an offer of a definite amount of money, the candidate will report this amount as a contribution on the sworn statement as of the day of acceptance, and there is no requirement to disclose the subsequent receipt of this money. Election Law Opinion No. JWF-22 (1983).

If the total amount of a guarantee on a loan is ascertainable at the time the promise to guarantee was made and accepted, the candidate must report

this information on the sworn statement covering that reporting period and subsequent payment by the guarantor is not a reportable event; however, if the total amount of interest to be paid by the guarantor is not ascertainable until receipt of the bill, the candidate will report the name and address of the guarantor, date of receipt of bill, and amount of payment required during that reporting period on each applicable sworn statement. Election Law Opinion No. JWF-22 (1983).

2. Return of contribution

Once a determination to refuse a contribution has been made, the contribution must be returned within 30 days after the deadline for filing a report for the reporting period during which the contribution is received. Tex.Ethics Comm.Op. No. 6 (1992).

§ 254.035. Time of Making Expenditure

(a) For purposes of reporting under this chapter, a political expenditure is not considered to have been made until the amount is readily determinable by the person making the expenditure, except as provided by Subsection (b).

(b) If the character of an expenditure is such that under normal business practice the amount is not disclosed until receipt of a periodic bill, the expenditure is not considered made until the date the bill is received.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987.

Historical and Statutory Notes

Derivation:

V.T.C.A. Election Code, § 251.011(c)(6).

Notes of Decisions

Time of reporting 1

1. Time of reporting

For purposes of V.A.T.S. Election Code, art. 14.01 et seq., an expenditure was not reportable until the amount was readily determinable or, if the character of the expenditure was such that normal business practice was not to disclose the amount until the date of receipt of the next periodic bill, until the date of such receipt, and once an obligation was reported as an expenditure, actual payment of the obligation did not trigger addition-

al reporting requirements under art. 14.01 et seq. Election Law Opinion No. JWF-22 (1983).

Where a contract was entered into by a campaign to rent office space at a rate that exceeded \$50 per month, an expenditure under this chapter occurred upon the creation of the lessee's obligation to pay a definite amount of money, and since the amount of this expenditure was readily determinable at the time of contracting, statute required the candidate to report on the applicable sworn statement the total amount of rent payable under the contract as an expenditure as of the day of contracting. Election Law Opinion No. JWF-22 (1983).

§ 254.036. Form of Report; Affidavit; Mailing of Forms

(a) Each report filed under this chapter with an authority other than the commission must be on a form prescribed by the commission and must be written in black ink or typed with black typewriter ribbon unless the report is a computer printout. If the report is a computer printout, the printout must conform to the same format and paper size as the form prescribed by the commission.

(b) Except as provided by Subsection (c), (d), (e), (f), or (g), each report filed under this chapter with the commission must be filed by computer diskette, modem, or other means of electronic transfer, using computer software provided by the commission or computer software that meets commission specifications for a standard file format.

(c) A candidate, officeholder, or political committee that is required to file reports with the commission may file reports that comply with Subsection (a) if the candidate, officeholder, or campaign treasurer of the committee files with the commission an affidavit stating that the candidate, officeholder, or committee, an agent of the candidate, officeholder, or committee, or a person with whom the candidate, officeholder, or committee contracts does not use computer equipment to keep the current records of political contributions, political expenditures, or persons making political contributions to the candidate, officeholder, or committee. An affidavit under this subsection must be filed with each report filed under Subsection (a). The affidavit must include a statement that the candidate, officeholder, or political committee understands that if the candidate, officeholder, or committee, a consultant of the candidate, officeholder, or committee, or a person with whom the candidate, officeholder, or committee contracts uses computer equipment for a purpose described by this subsection, the candidate, officeholder, or committee is required to file reports under Subsection (b).

(d) A candidate, officeholder, or political committee that is required to file reports with the commission, other than a candidate for or holder of a statewide office or a specific-purpose committee for supporting or opposing such a candidate or assisting such an officeholder, may file reports that comply with Subsection (a) if the candidate or committee does not accept political contributions that in the aggregate exceed \$20,000 or make political expenditures that in the aggregate exceed \$20,000 in a calendar year. A candidate, officeholder, or political committee that exceeds \$20,000 in political contributions or political expenditures in a calendar year shall file reports as required by Subsection (b) for:

(1) any reporting period during the calendar year in which the limit prescribed by this subsection is exceeded, other than a reporting period that has ended on the date the limit is exceeded; and

(2) each reporting period during a calendar year subsequent to the calendar year in which the limit is exceeded.

(e) A candidate for an office described by Section 252.005(5) or a specific-purpose committee for supporting or opposing only candidates for an office described by Section 252.005(5) or a measure described by Section 252.007(5) may file reports that comply with Subsection (a).

(f) An individual required to file a report with the commission in connection with a direct campaign expenditure to which Section 253.062 applies may file a report that complies with Subsection (a).

(g) A person required to file a report with the commission in connection with the office of district judge, district attorney, or judge of a multicounty statutory county court may file reports that comply with Subsection (a).

(h) Each report filed under this chapter that is not filed by electronic transfer must be accompanied by an affidavit executed by the person required to file the report. The affidavit must contain the statement: "I swear, or affirm, under penalty of perjury, that the accompanying report is true and correct and includes all information required to be reported by me under Title 15, Election Code." Each report filed under this chapter by electronic transfer must be under oath by the person required to file the report and must contain, in compliance with commission specifications, the digitized signature of the person required to file the report. A report filed under this chapter is considered to be under oath by the person required to file the report, and the person is subject to prosecution under Chapter 37, Penal Code, regardless of the absence of or a defect in the affidavit.

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(i) Each person required to file reports with the commission that comply with Subsection (b) shall file with the commission a written statement providing the manner of electronic transfer that the person will use to file the report. A statement under this subsection must be filed not later than the 30th day before the filing deadline for the first report a person is required to file under Subsection (b). A person who intends to change the manner of filing described by the person's most recent statement shall notify the commission of the change not later than the 30th day before the filing deadline for the report to which the change applies. If a person does not file a statement under this subsection, the commission may accept as authentic a report filed in any manner that complies with Subsection (b). If the commission receives a report that is not filed in the manner described by the person's most recent statement under this subsection, the commission shall promptly notify the person in writing that the commission has received a report filed in a different manner than expected.

(j) As part of the notification required by Section 251.033, the commission shall mail the appropriate forms to each person required to file a report with the commission during that reporting period.

(k) The commission shall prescribe forms for purposes of legislative caucus reports under Section 254.0311 that are separate and distinct from forms for other reports under this chapter.

(l) This section applies to a report that is filed electronically or otherwise.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 304, § 5.11, eff. Jan. 1, 1992; Acts 1995, 74th Leg., ch. 43, § 3, eff. Aug. 28, 1995; Acts 1997, 75th Leg., ch. 1134, §§ 6, 7, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1434, § 1, eff. Sept. 1, 1999.

Historical and Statutory Notes

1991 Legislation

The 1991 amendment, in the section heading, inserted "MAILING OF FORMS"; in subsec. (a) twice substituted "commission" for "secretary of state"; and added subsec. (c).

1997 Legislation

For application provision of Acts 1997, 75th Leg., ch. 1134, see notes following V.T.C.A., Election Code § 253.001.

Section 20 of Acts 1997, 75th Leg., ch. 1134 provides:

"Section 254.036, Election Code, as amended by this Act, applies only to a report under Chapter 254, Election Code, that is required to be filed on or after September 1, 1997. A report under Chapter 254, Election Code, that is required to be filed before September 1, 1997, is governed by the law in effect on the date the report is required to be filed, and that law is continued in effect for that purpose."

1999 Legislation

Section 6 of Acts 1999, 76th Leg., ch. 1434 provides:

"(a) Section 254.036, Election Code, as amended by this Act, applies only to a report required to be filed under Chapter 254, Election Code, on or after January 1, 2000. A report required to be filed under Chapter 254, Election Code, before January 1, 2000, may be filed in compliance with Section 254.036, Election Code, as that section existed before amendment by this Act, and the former law is continued in effect for that purpose.

"(b) Notwithstanding Section 254.036, Election Code, as amended by this Act, a person required to file a report under Chapter 254, Election Code,

that complies with Section 254.036(b), Election Code, as amended by this Act, and that is required to be filed on or after January 1, 2000, and before July 1, 2000, may file a report that complies with Section 254.036(a), Election Code, as amended by this Act, unless, not later than January 1, 2000:

"(1) the Texas Ethics Commission has developed, purchased, or obtained a license to use computer software that complies with Section 254.0361, Election Code, as added by this Act, and that permits a person to electronically file a report under Chapter 254, Election Code, as required by Section 254.036, Election Code, as amended by this Act, by using a publicly accessible computer terminal, as defined by Section 254.0362, Election Code, as added by this Act; and

"(2) the commission has determined that the computer software has been sufficiently tested and demonstrated to be reliable when used with a publicly accessible computer terminal.

"(c) Notwithstanding Section 254.036, Election Code, as amended by this Act, a person required to file a report under Chapter 254, Election Code, that complies with Section 254.036(b), Election Code, as amended by this Act, and that is required to be filed on or after July 1, 2000, and before January 1, 2001, may file reports that comply with Section 254.036(a), Election Code, as amended by this Act, unless, not later than July 1, 2000:

"(1) the Texas Ethics Commission has developed, purchased, or obtained a license to use computer software that complies with Section 254.0361, Election Code, as added by this Act, and that permits a person to electronically file a report under Chapter 254, Election Code, as required by Section 254.036, Election Code, as amended by this Act, by using a publicly accessible computer termi-

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nal, as defined by Section 254.0362, Election Code, as added by this Act; and

“(2) the commission has determined that the computer software has been sufficiently tested and demonstrated to be reliable when used with a publicly accessible computer terminal.

“(d) If, under Subsection (b) or (c) of this section, a person is not required to file a report that

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complies with Section 254.036(b), Election Code, as amended by this Act, the person shall either file a report that complies with Section 254.036(a), Election Code, or Section 254.036(b), Election Code, as amended by this Act.”

Derivation:

V.T.C.A. Election Code, § 251.011(f), (p).

Notes of Decisions

Forms 2

Oath 3

Time of reporting 1

1. Time of reporting

Once a contribution had been properly reported, V.A.T.S. Election Code, art. 14.01 et seq., offered no method to adjust a previous statement reporting a pledge to contribute money when the actual transfer of funds was never realized, so a candidate could do so in any way which achieved the purpose within the confines of art. 14.01 et seq., including the reporting of this amount on a sworn statement as a negative adjustment to contributions. Election Law Opinion No. JWF-22 (1983).

2. Forms

A person filing a report under Title 15 under Election Code may not substitute a form in place

of the prescribed form or a page in place of a page of the form adopted by the commission unless the commission has approved the use of the substitute form. Tex.Ethics Comm.Op. No. 7 (1992).

3. Oath

Oath required when officeholder, who makes political expenditures from his personal funds seeks reimbursement from political contributions and files report in connection therewith, is not a legal conclusion and, thus, false statement on such report can support perjury prosecution. State v. Eversole (App. 14 Dist. 1994) 889 S.W.2d 418, rehearing overruled, petition for discretionary review refused 899 S.W.2d 204, rehearing on petition for discretionary review denied.

§ 254.0361. Requirements for Electronic Filing Software

(a) Computer software provided or approved by the commission for use under Section 254.036(b) must:

- (1) use a standardized format for the entry of names, addresses, and zip codes;
- (2) provide for secure and encoded transmission of data from the computer of a person filing a report to the computers used by the commission;
- (3) be capable of being used by a person with basic computing skills who uses a computer that uses a Windows operating system, Macintosh operating system, or another operating system that the commission determines is as popular as those systems for use with personal computers; and
- (4) permit a person using a computer to prepare a report or to retrieve information from a report to import information to the report from a variety of computer software applications that meet commission specifications for a standard file format or export information from the report to a variety of computer software applications that meet commission specifications for a standard file format without the need to reenter information.

(b) Before determining the specifications for computer software developed, purchased, or licensed for use under Section 254.036, the commission shall conduct at least one public hearing to discuss the specifications. For at least 10 days following the hearing, the commission shall accept public comments concerning the software specifications.

Added by Acts 1999, 76th Leg., ch. 1434, § 2, eff. Sept. 1, 1999.

§ 254.0362. Use of Publicly Accessible Computer Terminal for Preparation of Reports

(a) Except as provided by Subsection (d), a person who is required to file reports under this chapter may use a publicly accessible computer terminal that has Internet access and web browser software to prepare the reports.

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(b) A public entity may prescribe reasonable restrictions on the use of a publicly accessible computer terminal for preparation of reports under this chapter, except that a public entity may not prohibit a person from using a computer terminal for preparation of reports during the public entity's regular business hours if the person requests to use the computer terminal less than 48 hours before a reporting deadline to which the person is subject.

(c) This section does not require a public entity to provide a person with consumable materials, including paper and computer diskettes, in conjunction with the use of a publicly accessible computer terminal.

(d) An officeholder may not use a computer issued to the officeholder for official use to prepare a report under this title.

(e) In this section:

(1) "Public entity" means a state agency, city, county, or independent school district.

(2) "Publicly accessible computer terminal" means a computer terminal that is normally available for use by members of the public and that is owned by a state agency, an independent school district, or a public library operated by a city or county.

Added by Acts 1999, 76th Leg., ch. 1434, § 2, eff. Sept. 1, 1999.

§ 254.037. Filing Deadline

The deadline for filing a report required by this chapter is 5 p.m. on the last day permitted under this chapter for filing the report.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987.

Historical and Statutory Notes

Derivation:

V.T.C.A. Election Code, § 251.011(g) (part).

§ 254.038. Telegram Report by Certain Candidates and Political Committees

(a) In addition to other reports required by this chapter, the following persons shall file additional reports during the period beginning the ninth day before election day and ending at 12 noon on the second day before election day:

(1) a candidate for statewide office who has an opponent whose name is to appear on the ballot and who accepts political contributions from a person that in the aggregate exceed \$1,000 during that reporting period;

(2) a candidate for state senator who has an opponent whose name is to appear on the ballot and who accepts political contributions from a person that in the aggregate exceed \$1,000 during that reporting period;

(3) a candidate for state representative who has an opponent whose name is to appear on the ballot and who accepts political contributions from a person that in the aggregate exceed \$200 during that reporting period;

(4) a specific-purpose committee for supporting or opposing a candidate for statewide office and that accepts political contributions from a person that in the aggregate exceed \$1,000 during that reporting period;

(5) a specific-purpose committee for supporting or opposing a candidate for state senator and that accepts political contributions from a person that in the aggregate exceed \$1,000 during that reporting period; and

(6) a specific-purpose committee for supporting or opposing a candidate for state representative and that accepts political contributions from a person that in the aggregate exceed \$200 during that reporting period.

(b) Each report required by this section must include the amount of the contributions specified by Subsection (a), the full name and address of the person making the contributions, and the dates of the contributions.

(c) A report under this section shall be filed by telegram or telephonic facsimile machine or by hand with the commission not later than 48 hours after the contribution is accepted.

(d) Section 254.036 does not apply to a report required by this section.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 994, § 1, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 107, § 3.14, eff. Aug. 30, 1993; Acts 2001, 77th Leg., ch. 1428, § 1, eff. Sept. 1, 2001.

Historical and Statutory Notes

1989 Legislation

The 1989 amendment, in subsec. (c), inserted "or telephonic facsimile machine".

Without reference to the revision of this title by Acts 1987, 70th Leg., ch. 899, § 1, former § 251.011(d) was amended by Acts 1987, 70th Leg., ch. 54, § 19(a) to conform to Acts 1985, 69th Leg., ch. 170. Acts 1985, 69th Leg., ch. 170 [see Historical Note, main volume] was repealed by Acts 1987, 70th Leg., ch. 54, § 19(b). Acts 1987, 70th Leg., ch. 54, § 19(a) was repealed by Acts 1989, 71st Leg., ch. 2, § 7.19, to conform to Acts 1987, 70th Leg., ch. 899, eff. Aug. 28, 1989.

1993 Legislation

The 1993 amendment, to conform to § 1.39(b), of Acts 1991, 72nd Leg., ch. 304, in subsec. (c), substi-

tuted a reference to the commission for a reference to the secretary of state.

2001 Legislation

Section 3 of Acts 2001, 77th Leg., ch. 1428 provides:

"Section 254.038, Election Code, as amended by this Act, applies only to the reporting of a political contribution accepted on or after September 1, 2001. The reporting of a political contribution accepted before September 1, 2001, is governed by the law in effect on the date the contribution is accepted, and the former law is continued in effect for that purpose."

Derivation:

V.T.C.A. Election Code, § 251.011(d).

§ 254.039. Telegram Report by Certain General-Purpose Committees

(a) In addition to other reports required by this chapter, a general-purpose committee that makes direct campaign expenditures supporting or opposing either a single candidate that in the aggregate exceed \$1,000 or a group of candidates that in the aggregate exceed \$15,000 during the period beginning the ninth day before election day and ending at 12 noon on the second day before election day shall file a report by telegram or telephonic facsimile machine or by hand with the commission not later than 48 hours after the expenditure is made.

(b) Each report required by this section must include the amount of the expenditures, the full name and address of the persons to whom the expenditures are made, and the dates and purposes of the expenditures.

(c) Section 254.036 does not apply to a report required by this section.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 994, § 2, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 107, § 3.15, eff. Aug. 30, 1993.

Historical and Statutory Notes

1989 Legislation

The 1989 amendment, in subsec. (a), inserted "or telephonic facsimile machine".

1993 Legislation

The 1993 amendment, to conform to § 1.39(b), of Acts 1991, 72nd Leg., ch. 304, in subsec. (b), substi-

tuted a reference to the commission for a reference to the secretary of state.

§ 254.0391. Report During Special Legislative Session

(a) A statewide officeholder, a member of the legislature, or a specific-purpose committee for supporting, opposing, or assisting a statewide officeholder or member of the legislature, or a candidate for statewide office or the legislature or a specific-purpose committee for supporting or opposing the candidate, that accepts a political contribution during the period beginning on the date the governor signs the proclamation calling a special legislative session and continuing through the date of final adjournment shall report the contribution to the commission not later than the 30th day after the date of final adjournment.

(b) A determination to accept or refuse the political contribution shall be made not later than the third day after the date the contribution is received.

(c) Each report required by this section must include the amount of the political contribution, the full name and address of the person making the contribution, and the date of the contribution.

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(d) A report is not required under this section if a person covered by Subsection (a) is required to file another report under this chapter not later than the 10th day after the date a report required under this section would be due.

Added by Acts 1991, 72nd Leg., ch. 304, § 5.12, eff. Jan. 1, 1992.

Historical and Statutory Notes

1991 Legislation

For effective date and application of the 1991 act, see Historical and Statutory Notes following § 251.001.

Notes of Decisions

Return of contribution 1

within 30 days after the deadline for filing a report for the reporting period during which the contribution is received. *Tex.Ethics Comm.Op. No. 6 (1992).*

1. Return of contribution

Once a determination to refuse a contribution has been made, the contribution must be returned

§ 254.040. Preservation of Reports; Record of Inspection

(a) Each report filed under this chapter shall be preserved by the authority with whom it is filed for at least two years after the date it is filed.

(b) Each time a person requests to inspect a report, the commission shall place in the file a statement of the person's name and address, whom the person represents, and the date of the request. The commission shall retain that statement in the file for one year after the date the requested report is filed. This subsection does not apply to a request to inspect a report by:

- (1) a member or employee of the commission acting on official business; or
- (2) an individual acting on the individual's own behalf.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987; Acts 1997, 75th Leg., ch. 1134, § 8, eff. Sept. 1, 1997.

Historical and Statutory Notes

1997 Legislation

For application provision of Acts 1997, 75th Leg., ch. 1134, see notes following V.T.C.A., Election Code § 253.001.

Derivation:

V.T.C.A. Election Code, § 251.011(m).

Notes of Decisions

In general ½

two years after the date of filing. *Tex.Ethics Comm.Op. No. 306 (1996).*

Public information 1

1. Public information

½. In general

Election Code requires a filing authority to preserve a campaign treasurer appointment filed by a candidate for two years after the candidate terminates that appointment. Election Code requires a filing authority to preserve each report of contributions and expenditures filed by a candidate for

Election returns, applications by candidates for a position on the ballot as mayor or council member, and campaign contribution and expenditure reports are public information, and the exception contained in § 3(a)(3) of the Open Records Act (Vernon's Ann.Civ.St. art. 6252-17a) does not permit such information to be withheld from public inspection. *Op.Atty.Gen.1976, No. ORD-146.*

§ 254.0401. Availability of Electronic Reports on Internet

(a) Except as provided by Subsection (b), the commission shall make each report filed with the commission under Section 254.036(b) available to the public on the Internet not later than the second business day after the date the report is filed.

§ 254.0401

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(b) Except as otherwise provided by this subsection, the commission may not make a report filed with the commission under Section 254.036(b) for a reporting deadline by any candidate for a particular office or by a specific-purpose committee for supporting or opposing only one candidate for a particular office available to the public on the Internet until each candidate for that office and each specific-purpose committee for supporting or opposing only one candidate for that office, other than a candidate or committee to which Section 254.036(c) or (d) applies, has filed a report for that reporting deadline. Regardless of whether each candidate for a particular office and each specific-purpose committee for supporting or opposing only one candidate for that office has filed a report for a filing deadline, the commission shall make each report in connection with that office available on the Internet and by any other electronic means on:

(1) the 21st day after the date of the filing deadline, for a report other than a report required to be filed under Section 254.064(c); or

(2) the fourth day after the date of the filing deadline, for a report required to be filed under Section 254.064(c).

(c) Subsection (b) does not apply to a report filed under Section 254.038.

(d) The access allowed by this section to reports is in addition to the public's access to the information through other electronic or print distribution of the information.

(e) Before making a report filed under Section 254.036(b) available on the Internet, the commission shall remove each portion, other than city, state, and zip code, of the address of a person listed as having made a political contribution to the person filing the report. The address information removed must remain available on the report maintained in the commission's office but may not be available electronically at that office.

Added by Acts 1999, 76th Leg., ch. 1434, § 3, eff. Sept. 1, 1999.

Notes of Decisions

Addresses 1

contributor address information, other than city, state, and zip code, available by any electronic means, including computer diskettes. Op. Atty. Gen. 2000, No. JC-0198.

1. Addresses

Section 254.0401(e) of the Election Code precludes the Texas Ethics Commission from making

§ 254.0402. Public Inspection of Reports

(a) Notwithstanding Section 552.222(a), Government Code, the authority with whom a report is filed under this chapter may not require a person examining the report to provide any information or identification.

(b) The commission shall make information from reports filed with the commission under Section 254.036(b) available by electronic means, including:

(1) providing access to computer terminals at the commission's office;

(2) providing information on computer diskette for purchase at a reasonable cost; and

(3) providing modem or other electronic access to the information.

Added by Acts 1999, 76th Leg., ch. 1434, § 8, eff. Sept. 1, 1999.

§ 254.041. Criminal Penalty for Untimely or Incomplete Report

(a) A person who is required by this chapter to file a report commits an offense if the person knowingly fails:

(1) to file the report on time;

(2) to file a report by computer diskette, modem, or other means of electronic transfer, if the person is required to file reports that comply with Section 254.036(b); or

(3) to include in the report information that is required by this title to be included.

(b) Except as provided by Subsection (c), an offense under this section is a Class C misdemeanor.

(c) A violation of Subsection (a)(3) by a candidate or officeholder is a Class A misdemeanor if the report fails to include information required by Section 254.061(3) or Section 254.091(2), as applicable.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987; Acts 1999, 76th Leg., ch. 1434, § 4, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1420, § 4A.001, eff. Sept. 1, 2001.

Historical and Statutory Notes

Derivation:

V.T.C.A. Election Code, § 251.011(j)(1).

Cross References

Punishments,
Class A misdemeanor, see V.T.C.A., Penal
Code § 12.21.

Class C misdemeanor, see V.T.C.A., Penal
Code § 12.23.

Notes of Decisions

In general ½
Construction, deduction, and interpretation 5
Evidence 2
Filing date 1
Instructions and special issues 3
Knowing failure 7
Legal opinions and conclusions 6
Remedies 4
Sentence and punishment 8

Election Code, art. 14.08 pertaining to reporting of campaign contributions and expenditures as to time of filing of statement. *Hoeneke v. Lehman* (Civ.App. 1976) 542 S.W.2d 728.

2. Evidence

Since the State in prosecution for violating V.A.T.S. Election Code, art. 14.07, was required to prove that defendant intentionally or knowingly failed to file the statements required, extraneous offenses were admissible to prove scienter, since intent of guilty knowledge was an essential element of the State's case and could not be inferred from the Political Funds Reporting and Disclosure Act itself. *Beck v. State* (Cr.App. 1979) 583 S.W.2d 338.

3. Instructions and special issues

In prosecution for violating V.A.T.S. Election Code, art. 14.07, defendant was not prejudiced because the trial court set forth that law required filing of three sworn statements at various times whereas defendant was involved in a special election and only two reports were required, where defendant filed no reports. *Beck v. State* (Cr.App. 1979) 583 S.W.2d 338.

In prosecution for violating V.A.T.S. Election Code, art. 14.07, trial court's erroneous statement that defendant was charged with failing to file a sworn statement campaign contributions and expenditures when information related only to campaign expenditures was not prejudicial, where in applying the law to facts trial court carefully tracked the allegations in the information and did not authorize the jury to convict defendant on a theory of culpability not alleged in the information. *Beck v. State* (Cr.App. 1979) 583 S.W.2d 338.

The provision of V.A.T.S. Election Code, art. 14.07 relating to filing of final statement was defensive in nature and without record evidence raising such issue there was no need for trial court to charge thereon. *Beck v. State* (Cr.App. 1979) 583 S.W.2d 338.

½. In general

Public officials who violate contributions and expenditures report requirements of Election Code must be prosecuted under Election Code, rather than perjury provision of Penal Code; later-enacted Election Code is more narrow, prohibits conduct that would otherwise be punishable as perjury, and provides for lesser range of punishment. *State v. Salinas* (App. 1 Dist. 1997) 982 S.W.2d 9, rehearing overruled, petition for discretionary review refused.

1. Filing date

There was no "substantial" compliance with requirement of V.A.T.S. Election Code, art. 14.07 where statement of campaign expenditures was not filed until after date of primary election and statement was thus not open for public inspection so that voters might determine before election what persons were attempting to influence result of election. *Gray v. State ex rel. Brown* (Civ.App. 1966) 406 S.W.2d 934, error dismissed.

Where legislature amended the former Election Code subsequent to Court of Civil Appeals' construction of former V.A.T.S. Election Code, art. 14.07 governing reporting of campaign contributions and expenditures, that requirement of filing contained in art. 14.07 was mandatory while time of filing was directory, and legislature made no change in said article, legislature was presumed to have adopted such construction. *Hoeneke v. Lehman* (Civ.App. 1976) 542 S.W.2d 728.

A candidate was required to reasonably and substantially comply with provisions of V.A.T.S.

§ 254.041

Note 4

4. Remedies

Fact that candidate for office of constable who received majority of votes in general election failed to file a sworn statement of expenses at time provided by V.A.T.S. Election Code, art. 14.08, did not render votes cast for him void and did not entitle candidate with second highest number of votes to be declared elected, particularly where candidate with second highest number of votes failed to object to such failure until after general election. *Thorp v. Murchison* (Civ.App. 1963) 259 S.W.2d 614.

5. Construction, deduction, and interpretation

Defendant cannot be prosecuted for perjury if his statement was a matter of construction or deduction from given facts, and his construction was erroneous, incorrect, or illogical or, his statement was an opinion about legal effect of facts about which he is required to testify. *State v. Eversole* (App. 14 Dist. 1994) 889 S.W.2d 418, rehearing overruled, petition for discretionary review refused 899 S.W.2d 204, rehearing on petition for discretionary review denied.

6. Legal opinions and conclusions 6

Oath required when officeholder, who makes political expenditures from his personal funds

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seeks reimbursement from political contributions and files report in connection therewith, is not a legal conclusion and, thus, false statement on such report can support perjury prosecution. *State v. Eversole* (App. 14 Dist. 1994) 889 S.W.2d 418, rehearing overruled, petition for discretionary review refused 899 S.W.2d 204, rehearing on petition for discretionary review denied.

7. Knowing failure

"Knowingly" is required mental state for prosecution of class C offense for: (1) not filing officeholder report on time, or (2) not including all information required by Election Code. *State v. Eversole* (App. 14 Dist. 1994) 889 S.W.2d 418, rehearing overruled, petition for discretionary review refused 899 S.W.2d 204, rehearing on petition for discretionary review denied.

8. Sentence and punishment

Criminal penalty for officeholder's knowingly filing incomplete officeholder report was a Class C misdemeanor; officeholder could not be indicted for perjury. *State v. Eversole* (App. 14 Dist. 1994) 889 S.W.2d 418, rehearing overruled, petition for discretionary review refused 899 S.W.2d 204, rehearing on petition for discretionary review denied.

§ 254.042. Civil Penalty for Late Report

(a) The commission shall determine from any available evidence whether a report, other than a telegram report under Section 254.038 or 254.039, required to be filed with the commission under this chapter is late. On making that determination, the commission shall immediately mail a notice of the determination to the person required to file the report.

(b) If a report is determined to be late, the person required to file the report is civilly liable to the state for an amount determined by commission rule, but not to exceed \$100 for each day that the report is late. If a report is more than 30 days late, the commission shall issue a warning of liability by registered mail to the person required to file the report. If the penalty is not paid before the 10th day after the date on which the warning is received, the person is liable for a penalty in an amount determined by commission rule, but not to exceed \$10,000.

(c) A penalty paid voluntarily under this section shall be deposited in the State Treasury to the credit of the General Revenue Fund.

(d) Repealed by Acts 1991, 72nd Leg., ch. 304, § 5.20, eff. Jan. 1, 1992.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 304, § 5.13, eff. Jan. 1, 1992; Acts 1993, 73rd Leg., ch. 107, § 3.16, eff. Aug. 30, 1993.

Historical and Statutory Notes

1991 Legislation

The 1991 amendment rewrote subsec. (b) and subsec. (d), which prior thereto read:

"If a report is determined to be late, the person required to file the report is civilly liable to the state for \$100. If the penalty is not paid by the 10th day after the date the notice is mailed under Subsection (a), the secretary of state shall notify the attorney general to initiate suit to recover the civil penalty."

"Section 256.005(b) does not apply to the procedure for collecting a penalty under this section."

For effective date and application of the 1991 act, see Historical and Statutory Notes following § 251.001.

1993 Legislation

The 1993 amendment, to conform to § 1.39(b), of Acts 1991, 72nd Leg., ch. 304, in subsec. (a), substituted references to the commission for references to the secretary of state.

Derivation:

V.T.C.A. Election Code, § 251.014(a) to (c), (d).

Notes of Decisions

Penalty 1
Person liable 2

2. Person liable

Campaign treasurer of general-purpose committee is liable for any fine imposed for filing a committee report late. Tex.Ethics Comm.Op. No. 315 (1996).

1. Penalty

Payment of a fine for filing a late report with the Texas Ethics Commission is a political expenditure. Tex.Ethics Comm.Op. No. 206 (1994).

[Sections 254.043 to 254.060 reserved for expansion]

SUBCHAPTER C. REPORTING BY CANDIDATE

§ 254.061. Additional Contents of Reports

In addition to the contents required by Section 254.031, each report by a candidate must include:

(1) the candidate's full name and address, the office sought, and the identity and date of the election for which the report is filed;

(2) the campaign treasurer's name, residence or business street address, and telephone number;

(3) for each political committee from which the candidate received notice under Section 254.128 or 254.161:

(A) the committee's full name and address;

(B) an indication of whether the committee is a general-purpose committee or a specific-purpose committee; and

(C) the full name and address of the committee's campaign treasurer;

(4) the full name and address of each individual acting as a campaign treasurer of a political committee under Section 253.062 from whom the candidate received notice under Section 254.128 or 254.161; and

(5) on a separate page or pages of the report, the identification of any payment from political contributions made to a business in which the candidate has a participating interest of more than 10 percent, holds a position on the governing body of the business, or serves as an officer of the business.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 304, § 5.14, eff. Jan. 1, 1992.

Historical and Statutory Notes

1991 Legislation

The 1991 amendment added subd. (5).

For effective date and application of the 1991 act, see Historical and Statutory Notes following § 251.001.

Derivation:

V.T.C.A. Election Code, § 251.011(c)(2) (part).

Cross References

Modified reporting procedures for contributions or expenditures not exceeding \$500 in the aggregate, see V.T.C.A., Election Code § 254.181 et seq.

§ 254.0611. Additional Contents of Reports by Certain Judicial Candidates

(a) In addition to the contents required by Sections 254.031 and 254.061, each report by a candidate for a judicial office covered by Subchapter F, Chapter 253,¹ must include:

(1) the total amount of political contributions, including interest or other income, maintained in one or more accounts in which political contributions are deposited as of the last day of the reporting period;

(2) for each individual from whom the person filing the report has accepted political contributions that in the aggregate exceed \$50 and that are accepted during the reporting period:

(A) the principal occupation and job title of the individual and the full name of the employer of the individual or of the law firm of which the individual or the individual's spouse is a member, if any; or

(B) if the individual is a child, the full name of the law firm of which either of the individual's parents is a member, if any;

(3) a specific listing of each asset valued at \$500 or more that was purchased with political contributions and on hand as of the last day of the reporting period;

(4) for each political contribution accepted by the person filing the report but not received as of the last day of the reporting period:

(A) the full name and address of the person making the contribution;

(B) the amount of the contribution; and

(C) the date of the contribution; and

(5) for each outstanding loan to the person filing the report as of the last day of the reporting period:

(A) the full name and address of the person or financial institution making the loan; and

(B) the full name and address of each guarantor of the loan other than the candidate.

(b) In this section:

(1) "Child" has the meaning assigned by Section 253.158.

(2) "Law firm" and "member" have the meanings assigned by Section 253.157.

Added by Acts 1995, 74th Leg., ch. 763, § 3, eff. July 1, 1995.

¹ V.T.C.A., Election Code § 253.151 et seq.

Historical and Statutory Notes

1995 Legislation

Section 10(e) of the 1995 Act provides:

"Sections 254.0611; 254.0911, and 254.1211, Election Code, as added by this Act, apply to account balances, assets, and debts existing as of the effective date of Sections 3, 4, and 5 of this Act and to the reporting of a political contribution accepted on or after that date. The reporting of a political contribution accepted before the effective date of Sections 3, 4, and 5 of this Act is governed by the law in effect on the date it was accepted."

div date of Sections 3, 4, and 5 of this Act and to the reporting of a political contribution accepted on or after that date. The reporting of a political contribution accepted before the effective date of Sections 3, 4, and 5 of this Act is governed by the law in effect on the date it was accepted."

§ 254.062. Certain Officeholder Activity Included

If an officeholder who becomes a candidate has reportable activity that is not reported under Subchapter D before the end of the period covered by the first report the candidate is required to file under this subchapter, the reportable activity shall be included in the first report filed under this subchapter instead of in a report filed under Subchapter D.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987.

§ 254.063. Semiannual Reporting Schedule for Candidate

(a) A candidate shall file two reports for each year as provided by this section.

(b) The first report shall be filed not later than July 15. The report covers the period beginning January 1, the day the candidate's campaign treasurer appointment is filed, or the first day after the period covered by the last report required to be filed under this subchapter, as applicable, and continuing through June 30.

(c) The second report shall be filed not later than January 15. The report covers the period beginning July 1, the day the candidate's campaign treasurer appointment is filed, or the first day after the period covered by the last report required to be filed under this subchapter, as applicable, and continuing through December 31.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987.

Historical and Statutory Notes

Derivation:

V.T.C.A. Election Code, § 251.011(i)(4)(A).

Notes of Decisions

Filing date 1

1. Filing date

There was no "substantial" compliance with requirement of V.A.T.S. Election Code, art. 14.07 where statement of campaign expenditures was not filed until after date of primary election and statement was thus not open for public inspection so that voters might determine before election what persons were attempting to influence result of election. *Gray v. State ex rel. Brown* (Civ.App. 1966) 406 S.W.2d 934, error dismissed.

Where legislature amended the former Election Code subsequent to Court of Civil Appeals' con-

struction of former V.A.T.S. Election Code, art. 14.07 governing reporting of campaign contributions and expenditures, that requirement of filing contained in art. 14.07 was mandatory while time of filing was directory, and legislature made no change in said article, legislature was presumed to have adopted such construction. *Hoeneke v. Lehman* (Civ.App. 1976) 542 S.W.2d 728.

A candidate was required to reasonably and substantially comply with provisions of V.A.T.S. Election Code, art. 14.08 pertaining to reporting of campaign contributions and expenditures as to time of filing of statement. *Hoeneke v. Lehman* (Civ.App. 1976) 542 S.W.2d 728.

§ 254.064. Additional Reports of Opposed Candidate

(a) In addition to other required reports, for each election in which a person is a candidate and has an opponent whose name is to appear on the ballot, the person shall file two reports.

(b) The first report shall be filed not later than the 30th day before election day. The report covers the period beginning the day the candidate's campaign treasurer appointment is filed or the first day after the period covered by the last report required to be filed under this chapter, as applicable, and continuing through the 40th day before election day.

(c) The second report shall be filed not later than the eighth day before election day. The report covers the period beginning the 39th day before election day and continuing through the 10th day before election day.

(d) If a person becomes an opposed candidate after a reporting period prescribed by Subsection (b) or (c), the person shall file the person's first report not later than the regular deadline for the report covering the period during which the person becomes an opposed candidate. The period covered by the first report begins the day the candidate's campaign treasurer appointment is filed.

(e) In addition to other required reports, an opposed candidate in a runoff election shall file one report for that election. The runoff election report shall be filed not later than the eighth day before runoff election day. The report covers the period beginning the ninth day before the date of the main election and continuing through the 10th day before runoff election day.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987; Acts 1997, 75th Leg., ch. 864, § 245, eff. Sept. 1, 1997.

Historical and Statutory Notes

Derivation:

V.T.C.A. Election Code, § 251.011(i)(4)(B) (part).

Notes of Decisions

Validity of prior law 1

1. Validity of prior law

The exclusion of nonincumbent or nonpublic officeholders, uncontested candidates from the re-

porting requirements of V.A.T.S. Election Code, art. 14.07, did not violate Texas or federal constitutional mandates to afford equal protection of the law. *Beck v. State* (Cr.App. 1979) 533 S.W.2d 338.

§ 254.065. Final Report

(a) If a candidate expects no reportable activity in connection with the candidacy to occur after the period covered by a report filed under this subchapter, the candidate may designate the report as a "final" report.

(b) The designation of a report as a final report:

- (1) relieves the candidate of the duty to file additional reports under this subchapter, except as provided by Subsection (c); and
- (2) terminates the candidate's campaign treasurer appointment.

(c) If, after a candidate's final report is filed, reportable activity with respect to the candidacy occurs, the candidate shall file the appropriate reports under this subchapter and is otherwise subject to the provisions of this title applicable to candidates. A report filed under this subsection may be designated as a final report.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987.

Historical and Statutory Notes

Derivation:

V.T.C.A. Election Code, § 251.011(i)(8) (part).

Library References

Campaign contributions and expenditures, see
Brooks, 35 Texas Practice § 11.22.

Notes of Decisions

In general ½
Instructions 1

not a candidate. Tex.Ethics Comm.Op. No. 399 (1998).

1. Instructions

½. In general

An individual is a candidate as long as the individual has a campaign treasurer appointment on file. An individual who has filed a final report (and has not reappointed a campaign treasurer) is

The provision of V.A.T.S. Election Code, art. 14.07 relating to filing of final statement was defensive in nature and without record evidence raising such issue there was no need for trial court to charge thereon. Beck v. State (Cr.App. 1979) 583 S.W.2d 338.

§ 254.066. Authority With Whom Reports Filed

(a) Except as provided by Subsection (b), reports under this subchapter shall be filed with the authority with whom the candidate's campaign treasurer appointment is required to be filed.

(b) A report required to be filed under this subchapter by a candidate for a judicial district office filled by voters of only one county shall also be filed with the county clerk.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987; Acts 1999, 76th Leg., ch. 511, § 2, eff. Sept. 1, 1999.

Historical and Statutory Notes

1999 Legislation

Section 6(b) of Acts 1999, 76th Leg., ch. 511 provides:

"The changes in law made by Sections 254.066, 254.097, and 254.130, Election Code, as amended by this Act, apply only to a campaign finance report filed on or after the effective date of this

Act. A campaign finance report filed before the effective date of this Act is covered by the law in effect when the report was filed, and the former law is continued in effect for that purpose."

Derivation:

V.T.C.A. Election Code, § 251.011(g) (part).

Cross References

Treasurer appointments, filing authorities, see
V.T.C.A., Election Code § 252.005.

Notes of Decisions

Filing, generally 1

V.A.T.S. Election Code, art. 14.08 but mistakenly filed them with the county Democratic chairman, rather than the county clerk, the candidate met the "substantial compliance" test of previous court decisions, and was eligible to have his name placed on the ballot for the general election held on November 7, 1972. Op.Atty.Gen.1972 No. M-1188.

1. Filing, generally

Where the candidate at issue timely prepared all required sworn statements, as required by

[Sections 254.067 to 254.090 reserved for expansion]

SUBCHAPTER D. REPORTING BY OFFICEHOLDER

§ 254.091. Additional Contents of Reports

In addition to the contents required by Section 254.031, each report by an officeholder must include:

- (1) the officeholder's full name and address and the office held;
- (2) for each political committee from which the officeholder received notice under Section 254.128 or 254.161:
 - (A) the committee's full name and address;
 - (B) an indication of whether the committee is a general-purpose committee or a specific-purpose committee; and
 - (C) the full name and address of the committee's campaign treasurer; and
- (3) on a separate page or pages of the report, the identification of any payment from political contributions made to a business in which the officeholder has a participating interest of more than 10 percent, holds a position on the governing body of the business, or serves as an officer of the business.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 304, § 5.15, eff. Jan. 1, 1992.

Historical and Statutory Notes

1991 Legislation

The 1991 amendment added subd. (3).

Cross References

Activity reportable under this subchapter included in reports under Subch. C, see V.T.C.A., Election Code § 254.062.

§ 254.0911. Additional Contents of Reports by Certain Judicial Officeholders

In addition to the contents required by Sections 254.031 and 254.091, each report by a holder of a judicial office covered by Subchapter F, Chapter 253,¹ must include the contents prescribed by Section 254.0611.

Added by Acts 1995, 74th Leg., ch. 763, § 4, eff. July 1, 1995.

¹ V.T.C.A., Election Code § 253.151 et seq.

Historical and Statutory Notes

1995 Legislation

For application provision of the 1995 Act, see notes following V.T.C.A., Election Code § 254.0611.

§ 254.092. Certain Officeholder Expenditures Excluded

An officeholder is not required to report officeholder expenditures made from the officeholder's personal funds, except as provided by Section 253.035(h).

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 304, § 5.16, eff. Jan. 1, 1992.

Historical and Statutory Notes

1991 Legislation

The 1991 amendment added ", except as provided by Section 253.035(h)."

§ 254.093. Semiannual Reporting Schedule for Officeholder

(a) An officeholder shall file two reports for each year as provided by this section.

(b) The first report shall be filed not later than July 15. The report covers the period beginning January 1, the day the officeholder takes office, or the first day after the period covered by the last report required to be filed under this chapter, as applicable, and continuing through June 30.

(c) The second report shall be filed not later than January 15. The report covers the period beginning July 1, the day the officeholder takes office, or the first day after the period covered by the last report required to be filed under this chapter, as applicable, and continuing through December 31.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987.

Historical and Statutory Notes

Derivation:

V.T.C.A. Election Code, § 251.011(i)(1)(B)(i).

Notes of Decisions

Officeholder 1

affidavits and reports for each year for which office is held created duty which is imposed only on elected public officials. State v. Denton (App. 3 Dist. 1995) 893 S.W.2d 125, petition for discretionary review refused.

1. Officeholder

Requirements of election code with regard to duties of office holders to submit accompanying

§ 254.094. Report Following Appointment of Campaign Treasurer

(a) An officeholder who appoints a campaign treasurer shall file a report as provided by this section.

(b) The report covers the period beginning the first day after the period covered by the last report required to be filed under this chapter or the day the officeholder takes office, as applicable, and continuing through the day before the date the officeholder's campaign treasurer is appointed.

(c) The report shall be filed not later than the 15th day after the date the officeholder's campaign treasurer is appointed.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987.

Historical and Statutory Notes

Derivation:

V.T.C.A. Election Code, § 251.011(i)(1)(B)(ii).

Notes of Decisions

Filing, generally 1

1. Filing, generally

An office-holder files a sworn statement not later than the fifteenth day after the office-holder designates a campaign treasurer with the same authority with which the office-holder previously

filed statements relating to that office, and after an office-holder designates a campaign treasurer, the office-holder will file the semiannual sworn statements required of office-holders with the same authority with whom the office-holder filed the designation of campaign treasurer for the upcoming election. Election Law Opinion No. JWF-22 (1983).

§ 254.095. Report Not Required

If at the end of any reporting period prescribed by this subchapter an officeholder who is required to file a report with an authority other than the commission has not accepted political contributions that in the aggregate exceed \$500 or made political expenditures that in the aggregate exceed \$500, the officeholder is not required to file a report covering that period.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 107, § 3.17, eff. Aug. 30, 1993.

Historical and Statutory Notes

1993 Legislation

The 1993 amendment, to conform to § 1.39(b), of Acts 1991, 72nd Leg., ch. 304, substituted a refer-

ence to the commission for a reference to the secretary of state.

§ 254.096. Officeholder Who Becomes Candidate

An officeholder who becomes a candidate is subject to Subchapter C during each period covered by a report required to be filed under Subchapter C.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987.

§ 254.097. Authority With Whom Reports Filed

(a) Except as provided by Subsection (b), reports under this subchapter shall be filed with the authority with whom a campaign treasurer appointment by a candidate for the office held by the officeholder is required to be filed.

(b) A report required to be filed under this subchapter by the holder of a judicial district office filled by voters of only one county shall also be filed with the county clerk.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987; Acts 1999, 76th Leg., ch. 511, § 3, eff. Sept. 1, 1999.

Historical and Statutory Notes

1999 Legislation

Section 6(b) of Acts 1999, 76th Leg., ch. 511 provides:

"The changes in law made by Sections 254.066, 254.097, and 254.130, Election Code, as amended by this Act, apply only to a campaign finance report filed on or after the effective date of this

Act. A campaign finance report filed before the effective date of this Act is covered by the law in effect when the report was filed, and the former law is continued in effect for that purpose."

Derivation:

V.T.C.A. Election Code, § 251.011(g) (part).

Cross References

Treasurer appointments, filing authorities, see V.T.C.A., Election Code § 252.005.

[Sections 254.098 to 254.120 reserved for expansion]

SUBCHAPTER E. REPORTING BY SPECIFIC-PURPOSE COMMITTEE

§ 254.121. Additional Contents of Reports

In addition to the contents required by Section 254.031, each report by a campaign treasurer of a specific-purpose committee must include:

- (1) the committee's full name and address;
- (2) the full name, residence or business street address, and telephone number of the committee's campaign treasurer;
- (3) the identity and date of the election for which the report is filed, if applicable;
- (4) the name of each candidate and each measure supported or opposed by the committee, indicating for each whether the committee supports or opposes;
- (5) the name of each officeholder assisted by the committee;
- (6) the amount of each political expenditure in the form of a political contribution that is made to a candidate, officeholder, or another political committee and that is returned to the committee during the reporting period, the name of the person to whom the expenditure was originally made, and the date it is returned;
- (7) on a separate page or pages of the report, the identification of any payment from political contributions made to a business in which the candidate or officeholder has a participating interest of more than 10 percent, holds a position on the governing body of the business, or serves as an officer of the business; and
- (8) on a separate page or pages of the report, the identification of any contribution from a corporation or labor organization made and accepted under Subchapter D, Chapter 253.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 304, § 5.17, eff. Jan. 1, 1992.

Historical and Statutory Notes

1991 Legislation

The 1991 amendment added subds. (7) and (8).

For effective date and application of the 1991 act, see Historical and Statutory Notes following § 251.001.

Derivation:

V.T.C.A. Election Code, § 251.011(c)(2), (4).

Cross References

Modified reporting procedures for contributions or expenditures not exceeding \$500 in the aggregate, see V.T.C.A., Election Code § 254.181 et seq.

Notes of Decisions

Filing, generally 1

1. Filing, generally

A specific purpose political committee involved in an election to confirm the existence of a regional

transportation authority under Vernon's Ann.Civ. St. art. 1118y should file its designation of campaign treasurer and its periodic sworn statements with the Secretary of State. Election Law Opinion No. JWF-14 (1983).

§ 254.1211. Additional Contents of Reports of Certain Committees

In addition to the contents required by Sections 254.031 and 254.121, each report by a specific-purpose committee for supporting or opposing a candidate for or assisting a holder of a judicial office covered by Subchapter F, Chapter 253,¹ must include the contents prescribed by Section 254.0611.

Added by Acts 1995, 74th Leg., ch. 763, § 5, eff. July 1, 1995.

¹ V.T.C.A., Election Code § 253.151 et seq.

Historical and Statutory Notes

1995 Legislation

For application provision of the 1995 Act, see notes following V.T.C.A., Election Code § 254.0611.

§ 254.122. Involvement in More Than One Election by Certain Committees

If a specific-purpose committee for supporting or opposing more than one candidate becomes involved in more than one election for which the reporting periods prescribed by Section 254.124 overlap, the reportable activity that occurs during the overlapping period is not required to be included in a report filed after the first report in which the activity is required to be reported.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987.

§ 254.123. Semiannual Reporting Schedule for Committee

(a) The campaign treasurer of a specific-purpose committee shall file two reports for each year as provided by this section.

(b) The first report shall be filed not later than July 15. The report covers the period beginning January 1, the day the committee's campaign treasurer appointment is filed, or the first day after the period covered by the last report required to be filed under this subchapter, as applicable, and continuing through June 30.

(c) The second report shall be filed not later than January 15. The report covers the period beginning July 1, the day the committee's campaign treasurer appointment is filed, or the first day after the period covered by the last report required to be filed under this subchapter, as applicable, and continuing through December 31.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987.

Historical and Statutory Notes

1989 Legislation

Without reference to the revision of this title by Acts 1987, 70th Leg., ch. 899, § 1, former § 251.011(i)(4)(C) was amended by Acts 1987, 70th Leg., ch. 487, § 3. Acts 1987, 70th Leg., ch. 487, § 3 was repealed by Acts 1989, 71st Leg., ch. 2,

§ 7.19, to conform to Acts 1987, 70th Leg., ch. 899, eff. Aug. 28, 1989.

Derivation:

V.T.C.A. Election Code, § 251.011(i)(4)(A) (part).

§ 254.124. Additional Reports of Committee for Supporting or Opposing Candidate or Measure

(a) In addition to other required reports, for each election in which a specific-purpose committee supports or opposes a candidate or measure, the committee's campaign treasurer shall file two reports.

(b) The first report shall be filed not later than the 30th day before election day. The report covers the period beginning the day the committee's campaign treasurer appointment is filed or the first day after the period covered by the committee's last required report, as applicable, and continuing through the 40th day before election day.

(c) The second report shall be filed not later than the eighth day before election day. The report covers the period beginning the 39th day before election day and continuing through the 10th day before election day.

(d) If a specific-purpose committee supports or opposes a candidate or measure in an election after a reporting period prescribed by Subsection (b) or (c), the committee's campaign treasurer shall file the first report not later than the regular deadline for the report covering the period during which the committee becomes involved in the election. The period covered by the first report begins the day the committee's campaign treasurer appointment is filed or the first day after the period covered by the committee's last required report, as applicable.

(e) In addition to other required reports, the campaign treasurer of a specific-purpose committee that supports or opposes a candidate in an election and an ensuing runoff election

shall file one report for the runoff election. The runoff election report shall be filed not later than the eighth day before runoff election day. The report covers the period beginning the ninth day before the date of the main election and continuing through the 10th day before runoff election day.

(f) This section does not apply to a specific-purpose committee supporting only candidates who do not have opponents whose names are to appear on the ballot.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 2, § 7.17(a), eff. Aug. 28, 1989.

Historical and Statutory Notes

1989 Legislation

The 1989 amendment, to conform to Acts 1987, 70th Leg., ch. 487, § 2, added subsec. (f).

Without reference to the revision of this title by Acts 1987, 70th Leg., ch. 899, § 1, former § 251.011(i)(4)(B)(i) was amended by Acts 1987,

70th Leg., ch. 487, § 2. Acts 1987, 70th Leg., ch. 487, § 2, was repealed by Acts 1989, 71st Leg., ch. 2, § 7.17(b), eff. Aug. 28, 1989.

Derivation:

V.T.C.A. Election Code, § 251.011(i)(4)(B)(i) (part), (ii) (part).

Notes of Decisions

In general 1

12 S.W.3d 31, certiorari denied 120 S.Ct. 2690, 530 U.S. 1244, 147 L.Ed.2d 962.

1. In general

Undisputed evidence that campaign contributors failed to file report "not later than the [eighth] day before election day," as jury charge inquired, was sufficient to establish violation of Election Code reporting provision. *Osterberg v. Peca* (Sup. 2000)

Issue of whether campaign contributors, who did not strictly comply, nevertheless substantially complied, with Election Code reporting requirement did not have to be considered on appeal, where issue was not presented to jury. *Osterberg v. Peca* (Sup. 2000) 12 S.W.3d 31, certiorari denied 120 S.Ct. 2690, 530 U.S. 1244, 147 L.Ed.2d 962.

§ 254.125. Final Report of Committee for Supporting or Opposing Candidate or Measure

(a) If a specific-purpose committee for supporting or opposing a candidate or measure expects no reportable activity in connection with the election to occur after the period covered by a report filed under this subchapter, the committee's campaign treasurer may designate the report as a "final" report.

(b) The designation of a report as a final report:

- (1) relieves the campaign treasurer of the duty to file additional reports under this subchapter, except as provided by Subsection (c); and
- (2) terminates the committee's campaign treasurer appointment.

(c) If, after a committee's final report is filed, reportable activity with respect to the election occurs, the committee must file the appropriate reports under this subchapter and is otherwise subject to the provisions of this title applicable to political committees. A report filed under this subsection may be designated as a final report.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987.

Historical and Statutory Notes

Derivation:

V.T.C.A. Election Code, § 251.011(i)(8) (part).

§ 254.126. Dissolution Report of Committee for Assisting Officeholder

(a) If a specific-purpose committee for assisting an officeholder expects no reportable activity to occur after the period covered by a report filed under this subchapter, the committee's campaign treasurer may designate the report as a "dissolution" report.

(b) The filing of a report designated as a dissolution report:

- (1) relieves the campaign treasurer of the duty to file additional reports under this subchapter; and

(2) terminates the committee's campaign treasurer appointment.

(c) A dissolution report must contain an affidavit, executed by the committee's campaign treasurer, that states that all the committee's reportable activity has been reported.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987.

§ 254.127. Termination Report

(a) If the campaign treasurer appointment of a specific-purpose committee is terminated, the terminated campaign treasurer shall file a termination report.

(b) A termination report is not required if the termination occurs on the last day of a reporting period under this subchapter and a report for that period is filed as provided by this subchapter.

(c) The report covers the period beginning the day after the period covered by the last report required to be filed under this subchapter and continuing through the day the campaign treasurer appointment is terminated.

(d) The report shall be filed not later than the 10th day after the date the campaign treasurer appointment is terminated.

(e) Reportable activity contained in a termination report is not required to be included in any subsequent report of the committee that is filed under this subchapter. The period covered by the committee's first report filed under this subchapter after a termination report begins the day after the date the campaign treasurer appointment is terminated.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987.

Historical and Statutory Notes

Derivation:

V.T.C.A. Election Code, § 251.011(i)(10) (part).

Cross References

General-purpose committees, termination report filed as prescribed by this section, see V.T.C.A., Election Code § 254.160.

§ 254.128. Notice to Candidate and Officeholder of Contributions and Expenditures

(a) If a specific-purpose committee accepts political contributions or makes political expenditures for a candidate or officeholder, the committee's campaign treasurer shall deliver written notice of that fact to the affected candidate or officeholder not later than the end of the period covered by the report in which the reportable activity occurs.

(b) The notice must include the full name and address of the political committee and its campaign treasurer and an indication that the committee is a specific-purpose committee.

(c) A campaign treasurer commits an offense if the campaign treasurer fails to comply with this section. An offense under this section is a Class A misdemeanor.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987; Acts 1997, 75th Leg., ch. 864, § 246, eff. Sept. 1, 1997.

Cross References

General-purpose committees, notice of contributions or expenditures, see V.T.C.A., Election Code § 254.161.

Punishment, Class A misdemeanor, see V.T.C.A., Penal Code § 12.21.

Reporting by candidates, identifying information required,

Individual contributions acting as campaign treasurers who gave notice under this section, see V.T.C.A., Election Code § 254.061.

Political committees which gave notice under this section, see V.T.C.A., Election Code § 254.061.

Reporting by officeholders, identifying information required for political committees which gave notice under this section, see V.T.C.A., Election Code § 254.091.

Library References

Campaign contributions and expenditures, see
Brooks, 35 Texas Practice § 11.22.

§ 254.129. Notice of Change in Committee Status

(a) If a specific-purpose committee changes its operation and becomes a general-purpose committee, the committee's campaign treasurer shall deliver written notice of the change in status to the authority with whom the specific-purpose committee's reports under this chapter are required to be filed.

(b) The notice shall be delivered not later than the next deadline for filing a report under this subchapter that:

(1) occurs after the change in status; and

(2) would be applicable to the political committee if the committee had not changed its status.

(c) The notice must indicate the filing authority with whom future filings are expected to be made.

(d) A campaign treasurer commits an offense if the campaign treasurer fails to comply with this section. An offense under this section is a Class B misdemeanor.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987; Acts 1997, 75th Leg., ch. 864, § 247, eff. Sept. 1, 1997.

Historical and Statutory Notes

Derivation:

V.T.C.A. Election Code, § 251.011(i)(3) (part).

Cross References

General-purpose committees, notice of change in status as provided under this section, see V.T.C.A., Election Code § 254.162. Punishment, Class B misdemeanor, see V.T.C.A., Penal Code § 12.22.

§ 254.130. Authority With Whom Reports Filed

(a) Except as provided by Subsection (b), reports filed under this subchapter shall be filed with the authority with whom the political committee's campaign treasurer appointment is required to be filed.

(b) A report required to be filed under this subchapter by a specific-purpose committee for supporting or opposing a candidate for or assisting a holder of a judicial district office filled by voters of only one county shall also be filed with the county clerk.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987; Acts 1999, 76th Leg., ch. 511, § 4, eff. Sept. 1, 1999.

Historical and Statutory Notes

1999 Legislation

Section 6(b) of Acts 1999, 76th Leg., ch. 511 provides:

"The changes in law made by Sections 254.066, 254.097, and 254.130, Election Code, as amended by this Act, apply only to a campaign finance report filed on or after the effective date of this

Act. A campaign finance report filed before the effective date of this Act is covered by the law in effect when the report was filed, and the former law is continued in effect for that purpose."

Derivation:

V.T.C.A. Election Code, § 251.011(g) (part).

Cross References

Treasurer appointments, filing authorities, see V.T.C.A., Election Code §§ 252.006, 252.007.

[Sections 254.181 to 254.160 reserved for expansion]

SUBCHAPTER F. REPORTING BY GENERAL-PURPOSE COMMITTEE

Cross References

County executive committee, filing of reports required by this subchapter, see V.T.C.A., Election Code § 258.081.

§ 254.151. Additional Contents of Reports

In addition to the contents required by Section 254.081, each report by a campaign treasurer of a general-purpose committee must include:

- (1) the committee's full name and address;
- (2) the full name, residence or business street address, and telephone number of the committee's campaign treasurer;
- (3) the identity and date of the election for which the report is filed, if applicable;
- (4) the name of each identified candidate or measure or classification by party of candidates supported or opposed by the committee, indicating whether the committee supports or opposes each listed candidate, measure, or classification by party of candidates;
- (5) the name of each identified officeholder or classification by party of officeholders assisted by the committee;
- (6) the principal occupation of each person from whom political contributions that in the aggregate exceed \$50 are accepted during the reporting period;
- (7) the amount of each political expenditure in the form of a political contribution made to a candidate, officeholder, or another political committee that is returned to the committee during the reporting period, the name of the person to whom the expenditure was originally made, and the date it is returned; and
- (8) on a separate page or pages of the report, the identification of any contribution from a corporation or labor organization made and accepted under Subchapter D, Chapter 253.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 304, § 5.18, eff. Jan. 1, 1992.

Historical and Statutory Notes

1991 Legislation

The 1991 amendment added subd. (8).
For effective date and application of the 1991 act, see Historical and Statutory Notes following § 251.001.

Derivation:

V.T.C.A. Election Code, § 251.011(c)(2) (part), (3)(4) (part).

Notes of Decisions

Construction and application 1

rized to make. Election Law Letter Advisory No. 1982-2.

1. Construction and application

Reporting and disclosure requirements apply to contributions which labor organizations are autho-

§ 254.152. Time for Reporting Certain Expenditures

If a general-purpose committee makes a political expenditure in the form of a political contribution to another general-purpose committee or to an out-of-state political committee and the contributing committee does not intend that the contribution be used in connection with a particular election, the contributing committee shall include the expenditure in the first report required to be filed under this subchapter after the expenditure is made.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987.

Historical and Statutory Notes

Derivation:

V.T.C.A. Election Code, § 251.011(i)(9).

§ 254.153. **Semiannual Reporting Schedule for Committee**

(a) The campaign treasurer of a general-purpose committee shall file two reports for each year as provided by this section.

(b) The first report shall be filed not later than July 15. The report covers the period beginning January 1, the day the committee's campaign treasurer appointment is filed, or the first day after the period covered by the last report required to be filed under this subchapter, as applicable, and continuing through June 30.

(c) The second report shall be filed not later than January 15. The report covers the period beginning July 1, the day the committee's campaign treasurer appointment is filed, or the first day after the period covered by the last report required to be filed under this subchapter, as applicable, and continuing through December 31.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987.

Historical and Statutory Notes

Derivation:

V.T.C.A. Election Code, § 251.011(i)(2), (5)(A).

§ 254.154. **Additional Reports of Committee Involved in Election**

(a) In addition to other required reports, for each election in which a general-purpose committee is involved, the committee's campaign treasurer shall file two reports.

(b) The first report shall be filed not later than the 30th day before election day. The report covers the period beginning the day the committee's campaign treasurer appointment is filed or the first day after the period covered by the committee's last required report, as applicable, and continuing through the 40th day before election day.

(c) The second report shall be filed not later than the eighth day before election day. The report covers the period beginning the 39th day before election day and continuing through the 10th day before election day.

(d) If a general-purpose committee becomes involved in an election after a reporting period prescribed by Subsection (b) or (c), the committee's campaign treasurer shall file the first report not later than the regular deadline for the report covering the period during which the committee becomes involved in the election. The period covered by the first report begins the day the committee's campaign treasurer appointment is filed or the first day after the period covered by the committee's last required report, as applicable.

(e) In addition to other required reports, the campaign treasurer of a general-purpose committee involved in an election and an ensuing runoff election shall file one report for the runoff election. The runoff election report shall be filed not earlier than the 10th day or later than the eighth day before runoff election day. The report covers the period beginning the ninth day before the date of the main election and continuing through the 10th day before runoff election day.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987.

Historical and Statutory Notes

Derivation:

V.T.C.A. Election Code, § 251.011(i)(5)(B), (C),
(E), (F).

Notes of Decisions

Contributions to unopposed candidates 1

able activity during the period covered by the pre-election reports is to make a contribution in support of a candidate who does not have an opponent whose name is to appear on the ballot in the election. Tex.Ethics Comm.Op. No. 403 (1998).

1. Contributions to unopposed candidates

A general-purpose political committee is not required to file pre-election reports if its only report-

§ 254.155. Option to File Monthly; Notice

(a) As an alternative to filing reports under Sections 254.153 and 254.154, a general-purpose committee may file monthly reports.

(b) To be entitled to file monthly reports, the committee must deliver written notice of the committee's intent to file monthly to the commission not earlier than January 1 or later than January 15 of the year in which the committee intends to file monthly. The notice for a committee formed after January 15 must be delivered at the time the committee's campaign treasurer appointment is filed.

(c) A committee that files monthly reports may revert to the regular filing schedule prescribed by Sections 254.153 and 254.154 by delivering written notice of the committee's intent not earlier than January 1 or later than January 15 of the year in which the committee intends to revert to the regular reporting schedule. The notice must include a report of all political contributions accepted and all political expenditures made that were not previously reported.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 107, § 3.18, eff. Aug. 30, 1993.

Historical and Statutory Notes

1993 Legislation

The 1993 amendment, to conform to § 1.39(b), of Acts 1991, 72nd Leg., ch. 304, in subsec. (b), substituted a reference to the commission for a reference to the secretary of state.

Derivation:

V.T.C.A. Election Code, § 251.011(i)(6)(A), (C).

§ 254.156. Contents of Monthly Reports

Each monthly report filed under this subchapter must comply with Sections 254.031 and 254.151 except that the maximum amount of a political contribution, expenditure, or loan that is not required to be individually reported is \$10 in the aggregate.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987.

Historical and Statutory Notes

Derivation:

V.T.C.A. Election Code, § 251.011(i)(6)(B) (part).

§ 254.157. Monthly Reporting Schedule

(a) The campaign treasurer of a general-purpose committee filing monthly reports shall file a report not later than the fifth day of the month following the period covered by the report.

(b) A monthly report covers the period beginning the 26th day of each month and continuing through the 25th day of the following month, except that the period covered by the first report begins January 1 and continues through January 25.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 400, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

The 1991 amendment in subsec. (a) substituted "fifth" for "first".

Derivation:

V.T.C.A. Election Code, § 251.011(i)(6)(B) (part).

§ 254.158. **Exception to Monthly Reporting Schedule**

If the campaign treasurer appointment of a general-purpose committee filing monthly reports is filed after January 1 of the year in which monthly reports are filed, the period covered by the first monthly report begins the day the appointment is filed and continues through the 25th day of the month in which the appointment is filed unless the appointment is filed the 25th or a succeeding day of the month. In that case, the period continues through the 25th day of the month following the month in which the appointment is filed.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987.

§ 254.159. **Dissolution Report**

If a general-purpose committee expects no reportable activity to occur after the period covered by a report filed under this subchapter, the report may be designated as a "dissolution" report as provided by Section 254.126 for a specific-purpose committee and has the same effect.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987.

§ 254.160. **Termination Report**

If the campaign treasurer appointment of a general-purpose committee is terminated, the campaign treasurer shall file a termination report as prescribed by Section 254.127 for a specific-purpose committee.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987.

Historical and Statutory Notes

Derivation:

V.T.C.A. Election Code, § 251.011(i)(10).

§ 254.161. **Notice to Candidate and Officeholder of Contributions and Expenditures**

If a general-purpose committee other than the principal political committee of a political party or a political committee established by a political party's county executive committee accepts political contributions or makes political expenditures for a candidate or officeholder, notice of that fact shall be given to the affected candidate or officeholder as provided by Section 254.128 for a specific-purpose committee.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 531, § 3, eff. Sept. 1, 1993.

Historical and Statutory Notes

1993 Legislation

The 1993 amendment inserted "other than the principal political committee of a political party or a political committee established by a political party's county executive committee".

Derivation:

V.T.C.A. Election Code, § 251.011(e)(2).

Cross References

Reporting by candidates, identifying information required,

Individual contributors acting as campaign treasurers who gave notice under this section, see V.T.C.A., Election Code § 254.061.

Political committees which gave notice under this section, see V.T.C.A., Election Code § 254.061.

Reporting by officeholders, identifying information required for political committees which gave

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notice under this section, see V.T.C.A., Election Code § 254.091.

Library References

Campaign contributions and expenditures, see Brooks, 35 Texas Practice § 11.22.

§ 254.162. Notice of Change in Committee Status

If a general-purpose committee changes its operation and becomes a specific-purpose committee, notice of the change in status shall be given to the commission as provided by Section 254.129 for a specific-purpose committee.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 107, § 3.19, eff. Aug. 30, 1993.

Historical and Statutory Notes

1993 Legislation

The 1993 amendment, to conform to § 1.39(b), of Acts 1991, 72nd Leg., ch. 304, substituted a reference to the commission for a reference to the secretary of state.

Derivation:

V.T.C.A. Election Code, § 251.011(i)(3).

§ 254.163. Authority With Whom Reports Filed

Reports filed under this subchapter shall be filed with the commission.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 107, § 3.20, eff. Aug. 30, 1993.

Historical and Statutory Notes

1993 Legislation

The 1993 amendment, to conform to § 1.39(b), of Acts 1991, 72nd Leg., ch. 304, substituted a reference to the commission for a reference to the secretary of state.

Derivation:

V.T.C.A. Election Code, § 251.011(g) (part).

Cross References

Treasurer appointments, filing authorities, see V.T.C.A., Election Code § 252.009.

[Sections 254.164 to 254.180 reserved for expansion]

**SUBCHAPTER G. MODIFIED REPORTING PROCEDURES; \$500
MAXIMUM IN CONTRIBUTIONS OR EXPENDITURES**

§ 254.181. Modified Reporting Authorized

(a) An opposed candidate or specific-purpose committee required to file reports under Subchapter C or E¹ may file a report under this subchapter instead if the candidate or committee does not intend to accept political contributions that in the aggregate exceed \$500 or to make political expenditures that in the aggregate exceed \$500 in connection with the election.

(b) The amount of a filing fee paid by a candidate is excluded from the \$500 maximum expenditure permitted under this section.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987.

¹ Section 254.061 et seq. or § 254.121 et seq.

Historical and Statutory Notes

Derivation:

V.T.C.A. Election Code, § 251.013(a).

§ 254.182. Declaration of Intent Required

(a) To be entitled to file reports under this subchapter, an opposed candidate or specific-purpose committee must file with the campaign treasurer appointment a written declaration of intent not to exceed \$500 in political contributions or political expenditures in the election.

(b) The declaration of intent must contain a statement that the candidate or committee understands that if the \$500 maximum for contributions and expenditures is exceeded, the candidate or committee is required to file reports under Subchapter C or E,¹ as applicable.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987.

¹ Section 254.061 et seq. or § 254.121 et seq.

Historical and Statutory Notes

Derivation:

V.T.C.A. Election Code, § 251.013(b).

§ 254.183. Maximum Exceeded

(a) An opposed candidate or specific-purpose committee that exceeds \$500 in political contributions or political expenditures in the election shall file reports as required by Subchapter C or E,¹ as applicable.

(b) If a candidate or committee exceeds the \$500 maximum after the filing deadline prescribed by Subchapter C or E for the first report required to be filed under the appropriate subchapter, the candidate or committee shall file a report not later than 48 hours after the maximum is exceeded.

(c) A report filed under Subsection (b) covers the period beginning the day the campaign treasurer appointment is filed and continuing through the day the maximum is exceeded.

(d) The reporting period for the next report filed by the candidate or committee begins on the day after the last day of the period covered by the report filed under Subsection (b).

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987.

¹ Section 254.061 et seq. or § 254.121 et seq.

Historical and Statutory Notes

Derivation:

V.T.C.A. Election Code, § 251.013(d).

§ 254.184. Applicability of Regular Reporting Requirements

(a) Subchapter C or E,¹ as applicable, applies to an opposed candidate or specific-purpose committee filing under this subchapter to the extent that the appropriate subchapter does not conflict with this subchapter.

(b) A candidate or committee filing under this subchapter is not required to file any reports of political contributions and political expenditures other than the semiannual reports required to be filed not later than July 15 and January 15.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987.

¹ Section 254.061 et seq. or § 254.121 et seq.

Historical and Statutory Notes

Derivation:

V.T.C.A. Election Code, § 251.013(c), (f).

[Sections 254.185 to 254.200 reserved for expansion]

SUBCHAPTER H. UNEXPENDED CONTRIBUTIONS

Library References

Campaign contributions and expenditures, see
Brooks, 35 Texas Practice § 11.22.

§ 254.201. Annual Report of Unexpended Contributions

(a) This section applies to:

(1) a former officeholder who has unexpended political contributions after filing the last report required to be filed by Subchapter D;¹ or

(2) a person who was an unsuccessful candidate who has unexpended political contributions after filing the last report required to be filed by Subchapter C.²

(b) A person covered by this section shall file an annual report for each year in which the person retains unexpended contributions.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987.

¹ Section 254.091 et seq.

² Section 254.061 et seq.

Historical and Statutory Notes

Derivation:

V.T.C.A. Election Code, § 251.012(a).

§ 254.202. Filing of Report; Contents

(a) A person shall file the report required by Section 254.201 not earlier than January 1 or later than January 15 of each year following the year in which the person files a final report under this chapter.

(b) The report shall be filed with the authority with whom the person's campaign treasurer appointment was required to be filed.

(c) The report must include:

(1) the person's full name and address;

(2) the full name and address of each person to whom a payment from unexpended political contributions was made during the previous year;

(3) the date, amount, and purpose of each payment made under Subdivision (2);

(4) the total amount of unexpended political contributions as of December 31 of the previous year; and

(5) the total amount of interest and other income earned on unexpended political contributions during the previous year.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987.

Historical and Statutory Notes

Derivation:

V.T.C.A. Election Code, § 251.012(b).

Cross References

Treasurer appointments, filing authorities, see
V.T.C.A., Election Code § 252.005 et seq.

Notes of Decisions

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Filing fees 2

14.07a(d), and were required to be transferred and reported in same manner as if they were unexpended contributions. Election Law Opinion No. JWF-34 (1984).

1. Construction and application

Interest or other earnings on invested contributions were subject to personal use prohibition of V.A.T.S. Election Code, art. 14.03d (transferred; now, § 251.007), and to the disposition and reporting requirements of V.A.T.S. Election Code, art.

2. Filing fees

County clerks were required to collect reasonable fees for filing instruments submitted under the Campaign Reporting and Disclosure Act of 1973. Op.Atty.Gen.1974, No. H-235.

§ 254.203. Retention of Contributions

(a) A person may not retain political contributions covered by this title, assets purchased with the contributions, or interest and other income earned on the contributions for more than six years after the date the person either ceases to be an officeholder or candidate or files a final report under this chapter, whichever is later.

(b) If the person becomes an officeholder or candidate within the six-year period, the prohibition in Subsection (a) does not apply until the person again ceases to be an officeholder or candidate.

(c) A person who violates Subsection (a) commits an offense. An offense under this section is a Class A misdemeanor.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 2, § 7.18, eff. Aug. 28, 1989.

Historical and Statutory Notes

1989 Legislation

The 1989 amendment in subsec. (a) substituted "report" for "statement".

Derivation:

V.T.C.A. Election Code, § 251.012(d) (part).

Cross References

Punishment, Class A misdemeanor, see V.T.C.A., Penal Code § 12.21.

Notes of Decisions

Construction and application 1
Disposition of contributions 2

V.A.T.S. Election Code, art. 14.03d (transferred; now, § 251.007), even if earned on or after September 1, 1983. State Ethics Advisory Commission Opinion 1984-23.

1. Construction and application

Statute does not prohibit a person who holds a public office in Texas from using contributions legally accepted as a state candidate or officeholder in a subsequent campaign by that person for a federal office. Election Law Opinion No. JWF-30 (1984).

Political contributions accepted by candidate or officeholder before September 1, 1983 were not subject to six-year disposition requirement of V.A.T.S. Election Code, art. 14.07a(d), and interest derived from investment of these political funds was not subject to personal use restriction of

2. Disposition of contributions

Computer and software purchased by officeholder with officeholder funds for use for political purposes could not become personal property of officeholder after leaving office; however, they could have been purchased with personal funds in amount equivalent, to at least their current fair market value at any time before time of mandatory disposition required by subsec. (d) of V.A.T.S. Election Code, art. 14.07a. State Ethics Advisory Commission Opinion 1984-19.

§ 254.204. Disposition of Unexpended Contributions

(a) At the end of the six-year period prescribed by Section 254.203, the former officeholder or candidate shall remit any unexpended political contributions to one or more of the following:

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- (1) the political party with which the person was affiliated when the person's name last appeared on a ballot;
- (2) a candidate or political committee;
- (3) the comptroller of public accounts for deposit in the State Treasury;
- (4) one or more persons from whom political contributions were received, in accordance with Subsection (d);
- (5) a recognized tax-exempt, charitable organization formed for educational, religious, or scientific purposes; or
- (6) a public or private postsecondary educational institution or an institution of higher education as defined by Section 61.003(8), Education Code, solely for the purpose of assisting or creating a scholarship program.
- (b) A person who disposes of unexpended political contributions under Subsection (a)(2) shall report each contribution as if the person were a campaign treasurer of a specific-purpose committee.
- (c) Political contributions disposed of under Subsection (a)(3) may be appropriated only for financing primary elections.
- (d) The amount of political contributions disposed of under Subsection (a)(4) to one person may not exceed the aggregate amount accepted from that person during the last two years that the candidate or officeholder accepted contributions under this title.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987; Acts 1997, 75th Leg., ch. 864, § 248, eff. Sept. 1, 1997.

Historical and Statutory Notes

Derivation:

V.T.C.A. Election Code, § 251.012(d) (part), (e) to (h).

Notes of Decisions

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 Disposition of contributions 1
 Disposition of funds 2

personal use of political contributions under Title 15 of the Election Code. *Tex.Ethics Comm.Op. No. 47 (1992).*

3. Charitable organization

An officeholder may use political contributions left over from a campaign to make a donation to a tax-exempt, nonprofit organization serving physically, mentally, and developmentally challenged citizens without violating the prohibition on conversion of political contributions to personal use. *Tex.Ethics Comm.Op. No. 149 (1993).*

1. Disposition of contributions

V.A.T.S. Election Code, art. 14.01 et seq. did not prohibit a candidate or office-holder from donating unexpended contributions to public schools as long as the donation was made before the end of a six year period during which the donor had not been a candidate or office-holder. *State Ethics Advisory Commission Opinion 1984-2.*

2. Disposition of funds

An expenditure of political contributions for one of the purposes set out in section 254.204 is not a

4. Candidates or political committees

Surplus funds of a deceased officeholder may be contributed to a candidate as long as disposition of the funds is permissible under any applicable probate laws. *Tex.Ethics Comm.Op. No. 169 (1993).*

§ 254.205. Report of Disposition of Unexpended Contributions

(a) Not later than the 30th day after the date the six-year period prescribed by Section 254.203 ends, the person required to dispose of unexpended political contributions shall file a report of the disposition.

(b) The report shall be filed with the authority with whom the person's campaign treasurer appointment was required to be filed.

(c) The report must include:

- (1) the person's full name and address;

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(2) the full name and address of each person to whom a payment from unexpended political contributions is made; and

(3) the date and amount of each payment reported under Subdivision (2).

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987.

Historical and Statutory Notes

Derivation:

V.T.C.A. Election Code, § 251.012(d) (part).

Cross References

Treasurer appointments, filing authorities, see
V.T.C.A., Election Code § 252.005 et seq.

[Sections 254.206 to 254.230 reserved for expansion]

SUBCHAPTER I. CIVIL LIABILITY

§ 254.231. Liability to Candidates

(a) A candidate or campaign treasurer or assistant campaign treasurer of a political committee who fails to report in whole or in part a campaign contribution or campaign expenditure as required by this chapter is liable for damages as provided by this section.

(b) Each opposing candidate whose name appears on the ballot is entitled to recover damages under this section.

(c) In this section, "damages" means:

- (1) twice the amount not reported that is required to be reported; and
- (2) reasonable attorney's fees incurred in the suit.

(d) Reasonable attorney's fees incurred in the suit may be awarded to the defendant if judgment is rendered in the defendant's favor.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987.

Historical and Statutory Notes

Derivation:

V.T.C.A. Election Code, § 251.011(k).

Library References

Campaign contributions and expenditures, see
Brooks, 85 Texas Practice § 11.22.

Notes of Decisions

Contributions and expenditures 3
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2. Remedies

Fact that candidate for office of constable who received majority of votes in general election failed to file a sworn statement of expenses at time provided by V.A.T.S. Election Code, art. 14.08, did not render votes cast for him void and did not entitle candidate with second highest number of votes to be declared elected, particularly where candidate with second highest number of votes failed to object to such failure until after general election. *Thorp v. Murchison* (Civ.App. 1953) 259 S.W.2d 614.

Relators were not barred from bringing original mandamus proceeding seeking to compel recall

1. Validity of prior law

V.A.T.S. Election Code, art. 14.08, providing, inter alia, for liquidated damages for failure to report campaign contributions or expenditures was constitutional, despite contention that legislature had no authority to provide for liquidated damages. *Hoeneke v. Lehman* (Civ.App. 1976) 542 S.W.2d 728.

election of mayor and four city council members based on noncompliance with statute by failing to designate campaign treasurer and file campaign expense reports. *Blanchard v. Fulbright* (App. 14 Dist. 1982) 633 S.W.2d 617, dismissed.

3. Contributions and expenditures

Election Code provision stating that any person who knowingly makes or knowingly accepts unlawful campaign contribution is civilly liable to each opposing candidate whose named appeared on ballot in election in which unlawful contribution or expenditure was involved imposed civil liability for unlawful campaign contributions or expenditures but not for unreported contributions or expenditures, and thus, provision did not apply to permit Supreme Court candidate who did not become successful candidate's opposing candidate until after primary election to assert cause of action against opponent for campaign contribution and expenditure reporting violations connected with primary. *Howell v. Mauzy* (App. 3 Dist. 1994) 899

S.W.2d 690, writ denied, rehearing of writ of error overruled.

Political candidate's payment from personal funds of interest on loan from bank on which candidate was personally liable was not reportable "expenditure," under Election Code, but was discharge of candidate's personal obligation, even if candidate expended loan proceeds in election campaign. *Howell v. Mauzy* (App. 3 Dist. 1994) 899 S.W.2d 690, writ denied, rehearing of writ of error overruled.

4. Failure to report

Political candidate who reported date that he paid credit card bill for campaign expenses instead of date of transaction did not fail to report expenditure and such expenditure was not "unreported," under Election Code. *Howell v. Mauzy* (App. 3 Dist. 1994) 899 S.W.2d 690, writ denied, rehearing of writ of error overruled.

§ 254.232. Liability to State

A candidate, officeholder, or campaign treasurer or assistant campaign treasurer of a political committee who fails to report in whole or in part a political contribution or political expenditure as required by this chapter is liable in damages to the state in the amount of triple the amount not reported that is required to be reported.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987.

Historical and Statutory Notes

Derivation:

V.T.C.A. Election Code, § 251.011(f).

Library References

Campaign contributions and expenditures, see Brooks, 35 Texas Practice § 11.22.

CHAPTER 255. REGULATING POLITICAL ADVERTISING AND CAMPAIGN COMMUNICATIONS

Section		Section	
255.001.	Required Disclosure on Political Advertising.	255.005.	Misrepresentation of Identity.
255.002.	Rates for Political Advertising.	255.006.	Misleading Use of Office Title.
255.003.	Unlawful Use of Public Funds for Political Advertising.	255.007.	Notice Requirement on Political Advertising Signs.
255.004.	True Source of Communication.	255.008.	Disclosure on Political Advertising for Judicial Office.

Cross References

Punishments, Class A misdemeanor, see V.T.C.A., Penal Code § 12.21.	Class C misdemeanor, see V.T.C.A., Penal Code § 12.23.
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Library References

Campaign contributions and expenditures, see Brooks, 35 Texas Practice § 11.22.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

§ 255.001. Required Disclosure on Political Advertising

(a) A person may not knowingly enter into a contract or other agreement to print, publish, or broadcast political advertising that does not indicate in the advertising:

(1) that it is political advertising;

(2) the full name of either the individual who personally entered into the contract or agreement with the printer, publisher, or broadcaster or the person that individual represents; and

(3) in the case of advertising that is printed or published, the address of either the individual who personally entered into the agreement with the printer or publisher or the person that individual represents.

(b) This section does not apply to tickets or invitations to political fund-raising events or to campaign buttons, pins, hats, or similar campaign materials.

(c) A person who violates this section commits an offense. An offense under this section is a Class A misdemeanor.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987.

Historical and Statutory Notes

Derivation:

V.T.C.A. Election Code, § 251.015(a) (part).

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Standing 4
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sultant had adequate remedy in determining constitutionality within criminal proceedings. *Dallas County District Attorney v. Doe* (App. 5 Dist. 1998) 969 S.W.2d 537.

2. Construction and application

Printers, publishers and broadcasters need no longer comply with the requirements of former V.A.T.S. Election Code, art. 14.10, as they related to candidates for federal office. *Op. Atty. Gen.* 1975, No. H-588.

Under subd. (A) of V.A.T.S. Election Code, art. 14.09, if a campaign treasurer, acting as the agent of a candidate or a political committee, entered into a contract to broadcast political advertising, the political advertising had to disclose the name and address of either the campaign treasurer, the candidate, or political committee. *Election Law Opinion No. DAD-17* (1982).

Under subsec. (a) of V.A.T.S. Election Code, art. 14.09, the name of a political committee could have been used in disclaimers on printed, published, or broadcast political advertising and such disclosures in television broadcasts were sufficient if visually depicted or verbally announced. *Election Law Opinion No. DAD-33* (1982).

The name of a contributor to a political committee and the fact that the contributor provided the money used by the political committee to purchase a political advertisement may be included in the political advertisement disclosure statement, but the additional information concerning the contributor must not give the impression that the adver-

1. Validity

Subsection (A) of V.A.T.S. Election Code, art. 14.09, requiring that sponsors of political advertisements identify themselves did not violate First Amendment, and even if identification requirement infringed on broadcaster's First Amendment rights, the infringement was of an extremely limited nature, i.e., addition of words "paid political announcement" and sponsor's address, and the state's interest in such disclosure was compelling. *KVUE, Inc. v. Moore, C.A.5 (Tex.)* 1983, 709 F.2d 922, affirmed 104 S.Ct. 1580, 465 U.S. 1092, 80 L.Ed.2d 114.

1.5. Jurisdiction

Criminal district court, not civil district court, had authority to determine constitutionality of statute criminalizing political advertising which did not include name of individual, candidate or organization responsible for advertising; without a request for injunctive relief, consultant's request for declaration that statute was unconstitutional was outside civil district court's jurisdiction, and con-

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tisement emanates from a source other than its true source. Election Law Opinion No. DAD-45 (1982).

A letter from a legislator to residents of the legislator's district that does not come within the definition of "political advertising" is not required to contain a political advertising disclosure statement. Election Law Opinion No. DAD-52 (1982).

It is not a violation of the former Election Code for a member of the Texas House of Representatives to mail voter registration applications to new residents of the member's district. Election Law Opinion No. DAD-52 (1982).

The proper political advertising disclosure statement for printed campaign items contracted for by a candidate and subsequently offered for sale to third parties is the name and address of the agent who personally entered into the printing contract, or the person represented by such agent. Election Law Opinion No. DAD-61 (1982).

It is clear that section 255.001(a) of the Texas Election Code cannot constitutionally be enforced against a private individual who creates and/or distributes anonymous printed material from his own resources advocating a position on a particular issue, rather than the choice of a particular candidate, in an election. The statute may be constitutional in other contexts; and given that we do not possess a narrowing construction of the statute by the Texas Supreme Court or Court of Criminal Appeals, or an interpretation of the limits of *Melntyre v. Ohio Elections Commission*, 514 U.S. 334 (1995), by either the United States Court of Appeals for the Fifth Circuit or ultimately the United States Supreme Court, we must presume such constitutionality in those respects. *Op.Atty.Gen.* 2000, No. JC-0243.

3. Law governing

Subsection (A) of V.A.T.S. Election Code, art. 14.09, requiring sponsors of political advertisements to identify themselves was preempted by 47 U.S.C.A. § 317 to extent it sought to regulate federal candidates or committees, notwithstanding that compliance therewith did not preclude federal compliance; however, requirement was valid to extent it regulated advertising concerning state elections and campaigns. *KVUE, Inc. v. Moore, C.A.5 (Tex.)*1983, 709 F.2d 922, affirmed 104 S.Ct. 1580, 465 U.S. 1092, 80 L.Ed.2d 114.

4. Standing

Television broadcaster had standing to challenge constitutionality of subses. (A) and (B) of V.A.T.S. Election Code, art. 14.09, prescribing rates which radio and television stations could charge political advertisers and requiring sponsors of such advertisement to identify themselves and broadcaster presented a live controversy between adverse parties where station suffered actual monetary losses during time it obeyed the law and it had violated art. 14.09 since vacation of restraining order, several advertisers had filed written protests when station did not charge lowest unit rate and another inquired of county attorney's office what might be

done and county attorney's concerns about ambiguity of art. 14.09 were allayed by Attorney General's opinion. *KVUE, Inc. v. Moore, C.A.5 (Tex.)*1983, 709 F.2d 922, affirmed 104 S.Ct. 1580, 465 U.S. 1092, 80 L.Ed.2d 114.

5. Political advertising

In most circumstances, an advertisement congratulating a sports team that identifies a candidate or public officer as such is political advertising and must contain the information required by Election Code § 255.001. *Tex.Ethics Comm.Op.* No. 102 (1992).

A commercial sponsor who provided funding for a television program for a state representative with the intent that the state representative use the time to explain his position on legislative matters would be making an officeholder contribution. Because officeholder contributions from corporations and certain other entities are generally prohibited, those entities could not sponsor such a program. *Tex.Ethics Comm.Op.* No. 144 (1993).

Communications supporting or opposing candidates, office holders, or measures that appear in a newspaper, magazine, or periodical do not constitute political advertising if the publisher receives no consideration for publishing them, however, if such communications appear in a publication other than a newspaper, magazine, or periodical, they constitute political advertising and must be accompanied by the political advertising disclosure information set out in Election Code section 255.001. *Tex.Ethics Comm.Op.* No. 183 (1994).

Excluding candidates from a candidate forum makes the forum itself a communication in support of those included because the exclusion of certain candidates lends the sponsor's tacit support to those included as the candidates worthy of consideration by the audience. *Tex.Ethics Comm.Op.* No. 343 (1996).

If the information in a political advertising disclosure statement was correct when the political advertising was printed or published, the political advertising complies with Election Code section 255.001. *Tex.Ethics Comm.Op.* No. 376 (1997).

A campaign communication supporting an individual who is not an incumbent in the office sought does not comply with Election Code section 255.006(b) if it identifies the office sought but does not use the word "for." *Tex.Ethics Comm.Op.* No. 376 (1997).

Section 255.001 of the Election Code does not require that wooden nickels printed with a candidate's political logo include a political advertising disclosure statement. *Tex.Ethics Comm.Op.* No. 387 (1998).

Campaign balloons are not required to contain the disclosure statement described in Election Code section 255.001. *Tex.Ethics Comm.Op.* No. 390 (1998).

5.5. Envelopes

The disclosure information required by Election Code section 255.001 is not required on an envelope that is used to transmit political advertising

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provided that the political advertising in the envelope complies with the requirements of Election Code section 255.001. Tex.Ethics Comm.Op. No. 380 (1997).

6. Disclosure statement

A corporation may not pay for the printing or mailing of postcards that advocate the election of judges who won a local bar poll. Such postcards would be "political advertising" and the name of an individual or group that entered in an agreement to have the cards printed would have to appear on the postcards as a part of the disclosure statement. Tex.Ethics Comm.Op. No. 77 (1992).

A political advertising disclosure statement is not required on label stickers, pens, magnets, or emery boards, nor on an invitation to an "open

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house" held by the office holder. Tex.Ethics Comm.Op. No. 184 (1994).

The laws under the jurisdiction of the Texas Ethics Commission do not require that political advertising contain a disclaimer stating that the advertising was not paid for with political funds, but an officeholder may wish to include such a disclaimer to assure the public that public funds have not been used for campaign purposes. Tex.Ethics Comm.Op. No. 321 (1996).

A political committee may use its name in the political advertising disclosure statement required by Election Code section 255.001 even if the committee has not yet filed a campaign treasurer appointment. Tex.Ethics Comm.Op. No. 404 (1998).

§ 255.002. Rates for Political Advertising

(a) The rate charged for political advertising by a radio or television station may not exceed:

(1) during the 45 days preceding a general or runoff primary election and during the 60 days preceding a general or special election, the broadcaster's lowest unit charge for advertising of the same class, for the same time, and for the same period; or

(2) at any time other than that specified by Subdivision (1), the amount charged other users for comparable use of the station.

(b) The rate charged for political advertising that is printed or published may not exceed the lowest charge made for comparable use of the space for any other purposes.

(c) In determining amounts charged for comparable use, the amount and kind of space or time used, number of times used, frequency of use, type of advertising copy submitted, and any other relevant factors shall be considered.

(d) Discounts offered by a newspaper or magazine to its commercial advertisers shall be offered on equal terms to purchasers of political advertising from the newspaper or magazine.

(e) A person commits an offense if the person knowingly demands or receives or knowingly pays or offers to pay for political advertising more consideration than permitted by this section.

(f) An offense under this section is a Class C misdemeanor.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987.

Historical and Statutory Notes

Derivation:

V.T.C.A. Election Code, § 251.015(b).

Notes of Decisions

Construction and application 1
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states, he need not have charged the rates prescribed by subsec. (B) of V.A.T.S. Election Code, art. 14.09, for that advertising. Op.Atty.Gen. 1982, No. MW-488.

Under subsec. (B) of V.A.T.S. Election Code, art. 14.09, a candidate could only have been charged \$10 where a radio or television station sold one fixed position one-minute announcement in prime time to commercial advertisers for \$15, during the same period, an advertiser had bought 500 spots, but paid only \$5,000, or \$10 each, and the candidate bought one fixed position one-minute announcement in prime time; thus, where one political candidate purchased 500 spots and was

1. Construction and application

Printers, publishers and broadcasters need no longer comply with the requirements of former V.A.T.S. Election Code, art. 14.10, as they related to candidates for federal office. Op.Atty.Gen.1975, No. H-588.

If a broadcaster in Texas accepted advertising from candidates for state or local offices in other states, or on issues to be voted upon in other

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charged the reduced rate of \$10 per spot, and another candidate purchased only one spot, that candidate could only have been charged \$10 for the spot. Op.Atty.Gen.1982, No. MW-488.

The word "condition" in subsec. (B) of V.A.T.S. Election Code, art. 14.09, insured that any stipulations not inherent in a given "class" of time which accompanied the sale of an advertising spot to a commercial advertiser would be included as a factor in computing the "lowest unit charge" figure. Op.Atty.Gen.1982, No. MW-488.

The lowest unit charge and lowest charge made for comparable use for political advertising as prescribed under subds. (B)(1) and (2) of V.A.T.S. Election Code, art. 14.09, applied to any proposition or to any measures submitted to a vote of the people as well as the other types of elections enumerated in subd. (R) of V.A.T.S. Election Code, art. 14.01 [transferred; see, now, § 251.001, subd. (18)]. Election Law Interpretation No. DAD-3 (1982).

2. Law governing

Subsection (B) of V.A.T.S. Election Code, art. 14.09, providing that for all political advertising, both candidate and issue advertising, a broadcaster could never charge more than the lowest unit charged of the station for the same class, condition and amount of time for the same period conflicted

directly with federal law and was therefore preempted. KVUE, Inc. v. Moore, C.A.5 (Tex.)1983, 709 F.2d 922, affirmed 104 S.Ct. 1580, 465 U.S. 1092, 80 L.Ed.2d 114.

Subsection (B) of V.A.T.S. Election Code, art. 14.09, was only preempted by 47 U.S.C.A. § 315(b)(1) in the context of elections for federal office. Op.Atty.Gen. 1982, No. MW-488.

3. Standing

Television broadcaster had standing to challenge constitutionality of subsecs. (A) and (B) of V.A.T.S. Election Code, art. 14.09, prescribing rates which radio and television stations could charge political advertisers and requiring sponsors of such advertisement to identify themselves and broadcaster presented a live controversy between adverse parties where station suffered actual monetary losses during time it obeyed the law and it had violated art. 14.09 since vacation of restraining order, several advertisers had filed written protests when station did not charge lowest unit rate and another inquired of county attorney's office what might be done and county attorney's concerns about ambiguity of art. 14.09 were allayed by Attorney General's opinion. KVUE, Inc. v. Moore, C.A.5 (Tex.)1983, 709 F.2d 922, affirmed 104 S.Ct. 1580, 465 U.S. 1092, 80 L.Ed.2d 114.

§ 255.003. Unlawful Use of Public Funds for Political Advertising

(a) An officer or employee of a political subdivision may not spend or authorize the spending of public funds for political advertising.

(b) This section 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.

(c) A person who violates this section commits an offense. An offense under this section is a Class A misdemeanor.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987.

Historical and Statutory Notes

Derivation:

V.T.C.A. Election Code, §§ 251.009, 251.015(c).

Notes of Decisions

Prohibited activities 1

equipment for the distribution of political advertising. Tex.Ethics Comm.Op. No. 45 (1992).

1. Prohibited activities

An officer or employee of a school district may not use or authorize the use of school personnel or

§ 255.004. True Source of Communication

(a) A person commits an offense if, with intent to injure a candidate or influence the result of an election, the person enters into a contract or other agreement to print, publish, or broadcast political advertising that purports to emanate from a source other than its true source.

(b) A person commits an offense if, with intent to injure a candidate or influence the result of an election, the person knowingly represents in a campaign communication that the communication emanates from a source other than its true source.

(c) An offense under this section is a Class A misdemeanor.
Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987.

Historical and Statutory Notes

Derivation:

V.T.C.A. Election Code, §§ 251.015(a)(part),
251.016(a)(2), (c)(part).

Notes of Decisions

Construction and application 1

Election Code, arts. 18.57 or 14.10. Op.Atty.Gen.
1978, No. H-1178.

1. Construction and application

Mere use of term "democrat" or "republican" in organization's name was not a violation of V.A.T.S.

§ 255.005. Misrepresentation of Identity

(a) A person commits an offense if, with intent to injure a candidate or influence the result of an election, the person misrepresents the person's identity or, if acting or purporting to act as an agent, misrepresents the identity of the agent's principal, in political advertising or a campaign communication.

(b) An offense under this section is a Class A misdemeanor.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987; Acts 1997, 75th Leg., ch. 864, § 249, eff. Sept. 1, 1997.

Historical and Statutory Notes

Derivation:

V.T.C.A. Election Code, § 251.016(a)(1), (c)
(part).

§ 255.006. Misleading Use of Office Title

(a) A person commits an offense if the person knowingly enters into a contract or other agreement to print, publish, or broadcast political advertising with the intent to represent to an ordinary and prudent person that a candidate holds a public office that the candidate does not hold at the time the agreement is made.

(b) A person commits an offense if the person knowingly represents in a campaign communication that a candidate holds a public office that the candidate does not hold at the time the representation is made.

(c) For purposes of this section, a person represents that a candidate holds a public office that the candidate does not hold if:

(1) the candidate does not hold the office that the candidate seeks; and

(2) the political advertising or campaign communication states the public office sought but does not include the word "for" in a type size that is at least one-half the type size used for the name of the office to clarify that the candidate does not hold that office.

(d) A person other than an officeholder commits an offense if the person knowingly uses a representation of the state seal in political advertising.

(e) An offense under this section is a Class A misdemeanor.

Amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 300, § 30, eff. Aug. 30, 1993; Acts 1997, 75th Leg., ch. 864, § 250, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1134, § 9, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, § 5.17, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 737, § 1, eff. Sept. 1, 1999.

Historical and Statutory Notes

1993 Legislation

The 1993 amendment, in subsec. (c), substituted "state seal" for "Great Seal of Texas".

1997 Legislation

Section 257 of Acts 1997, 75th Leg., ch. 864, provides:

"This Act is intended only to change terminology involving gender in the Election Code to appropriate gender-neutral terminology. The reenactment of text in this Act to effect this change in terminology does not prevail over a conflicting change in law, including a conflict in gender-neutral terminology, made by another Act of the 75th Legislature, Regular Session, 1997, and that conflicting change is given effect with the change in terminology made by this Act."

For application provision of Acts 1997, 75th Leg., ch. 1134, see notes following V.T.C.A., Election Code § 253.001.

1999 Legislation

Section 3 of Acts 1999, 76th Leg., ch. 737 provides:

"The change in law made by this Act applies only to political advertising and campaign communications disseminated on or after the effective date of this Act. Political advertising and campaign communications disseminated before the effective date of this Act are governed by the law in effect when the political advertising or campaign communications were disseminated, and the former law is continued in effect for that purpose."

Derivation:

V.T.C.A. Election Code, § 251.016(b)(1), (c) (part).

Notes of Decisions

- In general ½
- Appointed officeholders 2
- Former office holders 1
- Incumbency 3

½. In general

The distribution of the brochure that is the subject of this opinion request would not violate Election Code section 255.006(b). Although the word "for" does not appear in every instance in which the candidate's name is linked to the office sought, the two instances in which it does occur is sufficient to satisfy the requirement in section 255.006(c). However, the recommended practice is to use the word "for" in any instance in which a non-incumbent candidate's name is linked to the office sought. *Tex.Ethics Comm.Op. No. 385 (1997)*.

1. Former office holders

Under Election Code § 255.006, a person may not suggest in political advertising or in a campaign communication that the person holds an office the person does not currently hold. *Tex.Ethics Comm.Op. No. 171 (1993)*.

The use of the title "Judge" by a retired judge who sits by assignment does not, by itself, repre-

sent that the former judge who holds an office he does not hold. *Tex.Ethics Comm.Op. No. 303 (1996)*.

2. Appointed officeholders

Under Election Code § 255.006, a candidate appointed pursuant to Local Government Code § 87.017(a) to perform the duties of a district attorney may not describe himself in campaign literature as a holder of the office of district attorney. *Tex.Ethics Comm.Op. No. 196 (1994)*.

3. Incumbency

A candidate who is not an incumbent in the office sought should avoid uncertainty about the application of section 255.006 of the Election Code governing political advertising by using words such as "for" before the name of the office sought, or "elect" before the candidate's name. *Tex.Ethics Comm.Op. No. 210 (1994)*.

Although a candidate may not suggest in political advertising and campaign communications that the candidate holds an office he or she does not hold, a candidate who is an officeholder is free to accurately identify himself or herself as the holder of a particular office. *Tex.Ethics Comm.Op. No. 321 (1996)*.

§ 255.007. Notice Requirement on Political Advertising Signs

(a) The following notice must be written on each political advertising sign:

"NOTICE: IT IS A VIOLATION OF STATE LAW (CHAPTERS 392 AND 393, TRANSPORTATION CODE), TO PLACE THIS SIGN IN THE RIGHT-OF-WAY OF A HIGHWAY."

(b) A person commits an offense if the person:

- (1) knowingly enters into a contract to print or make a political advertising sign that does not contain the notice required by Subsection (a); or
- (2) instructs another person to place a political advertising sign that does not contain the notice required by Subsection (a).

(c) An offense under this section is a Class C misdemeanor.

(d) It is an exception to the application of Subsection (b) that the political advertising sign was printed or made before September 1, 1997, and complied with Subsection (a) as it existed immediately before that date.

(e) In this section, "political advertising sign" means a written form of political advertising designed to be seen from a road but does not include a bumper sticker.

Added by Acts 1991, 72nd Leg., ch. 288, § 5, eff. Sept. 1, 1991. Amended by Acts 1997, 75th Leg., ch. 1134, § 10, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1349, § 71, eff. Sept. 1, 1997.

Historical and Statutory Notes

1997 Legislation

For application provision of Acts 1997, 75th Leg., ch. 1134, see notes following V.T.C.A., Election Code § 253.001.

Cross References

Punishment, Class C misdemeanor, see V.T.C.A., Penal Code § 12.23.

Notes of Decisions

Construction and application 1

disclosure requirements of V.A.T.S. Election Code, art. 14.09. Election Law Opinion No. JWF-35 (1984).

1. Construction and application

Political message depicted on electronic billboard sign was not subject to political advertising

§ 255.008. Disclosure on Political Advertising for Judicial Office

(a) This section applies only to a candidate or political committee covered by Subchapter F, Chapter 253.¹

(b) Political advertising by a candidate who files a declaration of intent to comply with the limits on expenditures under Subchapter F, Chapter 253, or a specific-purpose committee for supporting such a candidate may include the following statement: "Political advertising paid for by (name of candidate or committee) in compliance with the voluntary limits of the Judicial Campaign Fairness Act."

(c) Political advertising by a candidate who files a declaration of intent to comply with the limits on expenditures under Subchapter F, Chapter 253, or a specific-purpose committee for supporting such a candidate that does not contain the statement prescribed by Subsection (b) must comply with Section 255.001.

(d) Political advertising by a candidate who files a declaration of intent to exceed the limits on expenditures under Subchapter F, Chapter 253, or a specific-purpose committee for supporting such a candidate must include the following statement: "Political advertising paid for by (name of candidate or committee), (who or which) has rejected the voluntary limits of the Judicial Campaign Fairness Act."

(e) The commission shall adopt rules providing for:

(1) the minimum size of the disclosure required by this section in political advertising that appears on television or in writing; and

(2) the minimum duration of the disclosure required by this section in political advertising that appears on television or radio.

(f) A person who violates this section or a rule adopted under this section is liable for a civil penalty not to exceed:

(1) \$15,000, for a candidate for a statewide judicial office or a specific-purpose committee for supporting such a candidate;

(2) \$10,000, for a candidate for chief justice or justice, court of appeals, or a specific-purpose committee for supporting such a candidate; or

Title 15

(3) \$5,000, for a candidate for any other judicial office covered by Subchapter F, Chapter 253, or a specific-purpose committee for supporting such a candidate.

(g) Section 253.176 applies to the imposition and disposition of a civil penalty under this section.

Added by Acts 1995, 74th Leg., ch. 763, § 6, eff. Sept. 1, 1995.

¹ V.T.C.A., Election Code § 253.151 et seq.

CHAPTER 256. CITIZEN COMPLAINT [REPEALED]

§§ 256.001 to 256.007. Repealed by Acts 1991, 72nd Leg., ch. 304, § 5.20, eff. Jan. 1, 1992

Historical and Statutory Notes

The repealed sections, relating to citizen complaints alleging violations of Title 15, were derived from V.T.C.A. Election Code, § 251.017(a) to (f); Acts 1987, 70th Leg., ch. 899, § 1.

CHAPTER 257. POLITICAL PARTIES

Section	Section
257.001. Principal Political Committee of Political Party.	257.004. Restrictions on Contributions Before General Election.
257.002. Requirements Relating to Corporate or Labor Union Contributions.	257.005. Candidate for State Chairman of Political Party.
257.003. Report Required.	257.006. Criminal Penalty for Failure to Comply.
	257.007. Rules.

Cross References

Contributions from corporations and labor organizations, see V.T.C.A., Election Code § 253.104.

§ 257.001. Principal Political Committee of Political Party

The state or county executive committee of a political party may designate a general-purpose committee as the principal political committee for that party in the state or county, as applicable.

Added by Acts 1991, 72nd Leg., ch. 304, § 5.19, eff. Jan. 1, 1992.

Historical and Statutory Notes

1991 Legislation

For effective date and application of the 1991 act, see Historical and Statutory Notes following § 251.001.

§ 257.002. Requirements Relating to Corporate or Labor Union Contributions

(a) A political party that accepts a contribution authorized by Section 253.104 may use the contribution only to:

- (1) defray normal overhead and administrative or operating costs incurred by the party;
- or
- (2) administer a primary election or convention held by the party.

(b) A political party that accepts contributions authorized by Section 253.104 shall maintain the contributions in a separate account.

Added by Acts 1991, 72nd Leg., ch. 304, § 5.19, eff. Jan. 1, 1992.

Historical and Statutory Notes

1991 Legislation

For effective date and application of the 1991 act, see Historical and Statutory Notes following § 251.001.

Notes of Decisions

Administrative costs 1
Operating costs 2

to a political party. Tex.Ethics Comm.Op. 176 (1998).

2. Operating costs

A county executive committee of a political party may not use corporate contributions to pay the costs associated with the printing and distribution of brochures soliciting donations to and membership in the party or the costs associated with voter registration drives. Tex.Ethics Comm.Op. No. 272 (1995).

1. Administrative costs

A political party may accept contributions from a corporation to be used to purchase a building for a permanent party headquarters, provided that the party complies with Election Code Chapter 257 relating to corporate and labor union contributions

§ 257.003. Report Required

(a) A political party that accepts contributions authorized by Section 253.104 shall report all contributions and expenditures made to and from the account required by Section 257.002.

(b) The report must be filed with the commission and must include the information required under Section 254.031 as if the contributions or expenditures were political contributions or political expenditures.

(c) Sections 254.001 and 254.032-254.037 apply to a report required by this section as if the party chair were a campaign treasurer of a political committee and as if the contributions or expenditures were political contributions or political expenditures.

(d) The commission shall prescribe by rule reporting schedules for each primary election held by the political party and for the general election for state and county officers. Added by Acts 1991, 72nd Leg., ch. 304, § 5.19, eff. Jan. 1, 1992. Amended by Acts 1997, 75th Leg., ch. 864, § 251, eff. Sept. 1, 1997.

Historical and Statutory Notes

1991 Legislation

For effective date and application of the 1991 act, see Historical and Statutory Notes following § 251.001.

§ 257.004. Restrictions on Contributions Before General Election

(a) Beginning on the 60th day before the date of the general election for state and county officers and continuing through the day of the election, a political party may not knowingly accept a contribution authorized by Section 253.104 or make an expenditure from the account required by Section 257.002.

(b) A person who violates this section commits an offense. An offense under this section is a felony of the third degree.

Added by Acts 1991, 72nd Leg., ch. 304, § 5.19, eff. Jan. 1, 1992.

Historical and Statutory Notes

1991 Legislation

For effective date and application of the 1991 act, see Historical and Statutory Notes following § 251.001.

§ 257.005. Candidate for State Chairman of Political Party

(a) A candidate for state chair of a political party with a nominee on the ballot in the most recent gubernatorial general election is subject to the requirements of this title that apply to a candidate for public office, except as provided by this section.

(b) A political committee that supports or opposes a candidate covered by Subsection (a) is subject to the provisions of this title that apply to any other committee that supports or opposes candidates for public office, except as provided by this section.

(c) The reporting schedules for a candidate covered by Subsection (a) or a political committee supporting or opposing the candidate shall be prescribed by commission rule.

(d) Except as provided by this section, each contribution to and expenditure by a candidate covered by Subsection (a) is subject to the same requirements of this title as a political contribution to or a political expenditure by a candidate for public office. Each contribution to and expenditure by a political committee supporting or opposing a candidate covered by Subsection (a) is subject to the same requirements of this title as a political contribution to or political expenditure by any other specific-purpose committee.

(e) Section 251.001(1) does not apply to this section.

Added by Acts 1991, 72nd Leg., ch. 304, § 5.19, eff. Jan. 1, 1992. Amended by Acts 1997, 75th Leg., ch. 864, § 252, eff. Sept. 1, 1997.

Historical and Statutory Notes

1991 Legislation

For effective date and application of the 1991 act, see Historical and Statutory Notes following § 251.001.

§ 257.006. Criminal Penalty for Failure to Comply

(a) Except as provided by Section 257.004, a person who knowingly uses a contribution in violation of Section 257.002 or who knowingly fails to otherwise comply with this chapter commits an offense.

(b) An offense under this section is a Class A misdemeanor.

Added by Acts 1991, 72nd Leg., ch. 304, § 5.19, eff. Jan. 1, 1992.

Historical and Statutory Notes

1991 Legislation

For effective date and application of the 1991 act, see Historical and Statutory Notes following § 251.001.

Cross References

Punishment, Class A misdemeanor, see V.T.C.A., Penal Code § 12.21.

§ 257.007. Rules

The commission shall adopt rules to implement this chapter.

Added by Acts 1991, 72nd Leg., ch. 304, § 5.19, eff. Jan. 1, 1992.

Historical and Statutory Notes

1991 Legislation

For effective date and application of the 1991 act, see Historical and Statutory Notes following § 251.001.

CHAPTER 258. FAIR CAMPAIGN PRACTICES

Section		Section	
258.001.	Short Title.	258.005.	Forms.
258.002.	Purpose.	258.006.	Acceptance and Preservation of Copies.
258.003.	Delivery of Copy of Code.	258.007.	Subscription to Code Voluntary.
258.004.	Text of Code.		

Section

- 258.008. Indication on Political Advertising.
- 258.009. Civil Cause of Action.

§ 258.001. Short Title

This chapter may be cited as the Fair Campaign Practices Act.
 Added by Acts 1997, 75th Leg., ch. 168, § 1, eff. Sept. 1, 1997.

§ 258.002. Purpose

- (a) The purpose of this chapter is to encourage every candidate and political committee to subscribe to the Code of Fair Campaign Practices.
 - (b) It is the intent of the legislature that every candidate and political committee that subscribes to the Code of Fair Campaign Practices will follow the basic principles of decency, honesty, and fair play to encourage healthy competition and open discussion of issues and candidate qualifications and to discourage practices that cloud the issues or unfairly attack opponents.
- Added by Acts 1997, 75th Leg., ch. 168, § 1, eff. Sept. 1, 1997.

§ 258.003. Delivery of Copy of Code

- (a) When a candidate or political committee files its campaign treasurer appointment, the authority with whom the appointment is filed shall give the candidate or political committee a blank form of the Code of Fair Campaign Practices and a copy of this chapter.
 - (b) The authority shall inform each candidate or political committee that the candidate or committee may subscribe to and file the code with the authority and that subscription to the code is voluntary.
- Added by Acts 1997, 75th Leg., ch. 168, § 1, eff. Sept. 1, 1997.

§ 258.004. Text of Code

The Code of Fair Campaign Practices reads as follows:

CODE OF FAIR CAMPAIGN PRACTICES

There are basic principles of decency, honesty, and fair play that every candidate and political committee in this state has a moral obligation to observe and uphold, in order that, after vigorously contested but fairly conducted campaigns, our citizens may exercise their constitutional rights to a free and untrammelled choice and the will of the people may be fully and clearly expressed on the issues.

THEREFORE:

- (1) I will conduct the campaign openly and publicly and limit attacks on my opponent to legitimate challenges to my opponent's record and stated positions on issues.
- (2) I will not use or permit the use of character defamation, whispering campaigns, libel, slander, or scurrilous attacks on any candidate or the candidate's personal or family life.
- (3) I will not use or permit any appeal to negative prejudice based on race, sex, religion, or national origin.
- (4) I will not use campaign material of any sort that misrepresents, distorts, or otherwise falsifies the facts, nor will I use malicious or unfounded accusations that aim at creating or exploiting doubts, without justification, as to the personal integrity or patriotism of my opponent.
- (5) I will not undertake or condone any dishonest or unethical practice that tends to corrupt or undermine our system of free elections or that hampers or prevents the full and free expression of the will of the voters, including any activity aimed at intimidating voters or discouraging them from voting.
- (6) I will defend and uphold the right of every qualified voter to full and equal participation in the electoral process, and will not engage in any activity aimed at intimidating voters or discouraging them from voting.

(7) I will immediately and publicly repudiate methods and tactics that may come from others that I have pledged not to use or condone. I shall take firm action against any subordinate who violates any provision of this code or the laws governing elections.

I, the undersigned, candidate for election to public office in the State of Texas or campaign treasurer of a political committee, hereby voluntarily endorse, subscribe to, and solemnly pledge myself to conduct the campaign in accordance with the above principles and practices.

Date

Signature

Added by Acts 1997, 75th Leg., ch. 168, § 1, eff. Sept. 1, 1997.

§ 258.005. Forms

The commission shall print copies of the Code of Fair Campaign Practices and shall supply the forms to the authorities with whom copies of the code may be filed in quantities and at times requested by the authorities.

Added by Acts 1997, 75th Leg., ch. 168, § 1, eff. Sept. 1, 1997.

§ 258.006. Acceptance and Preservation of Copies

(a) An authority with whom a campaign treasurer appointment is filed shall accept each completed copy of the code submitted to the authority that is properly subscribed to by a candidate or the campaign treasurer of a political committee.

(b) Each copy of the code accepted under this section shall be preserved by the authority with whom it is filed for the period prescribed for the filer's campaign treasurer appointment.

Added by Acts 1997, 75th Leg., ch. 168, § 1, eff. Sept. 1, 1997.

Historical and Statutory Notes

1997 Legislation

Section 2 of Acts 1997, 75th Leg., ch. 168 provides:

"A candidate or political committee that has a campaign treasurer appointment on file on the

effective date of this Act may file the Code of Fair Campaign Practices authorized by Chapter 258, Election Code, as added by this Act, with the appropriate authority at any time."

§ 258.007. Subscription to Code Voluntary

The subscription to the Code of Fair Campaign Practices by a candidate or a political committee is voluntary.

Added by Acts 1997, 75th Leg., ch. 168, § 1, eff. Sept. 1, 1997.

§ 258.008. Indication on Political Advertising

A candidate or a political committee that has filed a copy of the Code of Fair Campaign Practices may so indicate on political advertising in a form to be determined by the commission.

Added by Acts 1997, 75th Leg., ch. 168, § 1, eff. Sept. 1, 1997.

§ 258.009. Civil Cause of Action

This chapter does not create a civil cause of action for recovery of damages or for enforcement of this chapter.

Added by Acts 1997, 75th Leg., ch. 168, § 1, eff. Sept. 1, 1997.

TITLE 16. MISCELLANEOUS PROVISIONS

WESTLAW Computer Assisted Legal Research

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For more information on using WESTLAW to supplement your research, see the WESTLAW Electronic Research Guide, which follows the Preface.

Library References

Tex. Prac., County and Special District Law, ch.
11.

CHAPTER 271. JOINT ELECTIONS

Section	Section
271.003. Location of Common Polling Place.	271.006. Early Voting.
	271.0071. Multiple Methods of Voting Allowed.

Library References

Joint elections, see Brooks, 35 Texas Practice
§ 11.6.

§ 271.002. Joint Elections Authorized

Historical and Statutory Notes

1987 Legislation

Acts 1985, 69th Leg., ch. 869 [see italicized note, main volume] was repealed by Acts 1987, 70th Leg., ch. 54, § 7.

§ 271.003. Location of Common Polling Place

(a) A regular county polling place may be used for a common polling place in a joint election.

(b) The voters of a particular election precinct or political subdivision may be served in a joint election by a common polling place located outside the boundary of the election precinct or political subdivision if the location can adequately and conveniently serve the affected voters and will facilitate the orderly conduct of the election.

Amended by Acts 1997, 75th Leg., ch. 1350, § 9, eff. Sept. 1, 1997.

§ 271.006. Early Voting

(a) The governing bodies of the political subdivisions participating in a joint election shall decide whether to conduct their early voting jointly. The governing bodies that decide to conduct joint early voting shall appoint one of their early voting clerks as the early voting clerk for the joint early voting.

MISCELLANEOUS PROVISIONS

§ 272.004

Title 16

(b) The joint early voting shall be conducted at the early voting polling place or places at which and during the hours, including any extended or weekend hours, that the early voting clerk regularly conducts early voting for the clerk's political subdivision.

(c) The regular early voting clerk for each political subdivision participating in the joint early voting shall receive applications for early voting ballots to be voted by mail in accordance with Title 7.¹ The remaining procedures for conducting the political subdivision's early voting by mail shall be completed by the regular early voting clerk or by the early voting clerk for the joint early voting, at the discretion of the governing body of each political subdivision participating in the joint early voting.

(d) If a governing body decides not to participate in the joint early voting, the early voting for that political subdivision shall be conducted in accordance with Title 7, except that the early voting may be conducted at common polling places.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.72; Acts 1991, 72nd Leg., ch. 554, § 43, eff. Sept. 1, 1991; Acts 1998, 78rd Leg., ch. 728, § 77, eff. Sept. 1, 1998.

¹ Section 81.001 et seq.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 141.034.

§ 271.0071. Multiple Methods of Voting Allowed

The restrictions on multiple methods of voting at the same polling place or in early voting prescribed by Sections 123.005–123.007 do not apply to a joint election as if the joint election were a single election but rather apply independently to the election of each participating political subdivision in the joint election.

Added by Acts 1997, 75th Leg., ch. 1349, § 72, eff. Sept. 1, 1997.

CHAPTER 272. BILINGUAL REQUIREMENTS

Section
272.004. Use of Bilingual Materials for Early Voting.

Section
272.005. Required Bilingual Materials.
272.006. Separate Translation Authorized.
272.010. Voter Registration Application Form.

Administrative Code References

Municipal securities, approved by attorney general, authorization elections, see 1 TAC § 53.21.

Library References

Conduct of elections, conduct at polls, see Brooks, 35 Texas Practice § 11.17.

§ 272.004. Use of Bilingual Materials for Early Voting

Bilingual election materials shall be used for early voting in each election in which bilingual election materials are used.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.73; Acts 1991, 72nd Leg., ch. 554, § 44, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 141.034.

§ 272.005. **Required Bilingual Materials**

(a) The instruction posters must be printed in English and Spanish on separate posters or on the same poster with the Spanish text next to the English text. If separate posters are used, they must be posted side by side.

(b) Except as provided by Section 272.006, ballots and voting system ballot labels must be printed with all ballot instructions, office titles, column headings, proposition headings, and propositions appearing in English and Spanish.

(c) Except as provided by Section 272.006, the following materials must contain a Spanish translation beneath the English text:

- (1) the official affidavit forms and other official forms that voters are required to sign in connection with voting;
- (2) the official application forms for early voting ballots;
- (3) written instructions furnished to early voting voters; and
- (4) the balloting materials furnished to voters in connection with early voting by mail.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.74; Acts 1991, 72nd Leg., ch. 554, § 45, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 141.034.

§ 272.006. **Separate Translation Authorized**

(a) In an election precinct in which use of bilingual election materials is required, bilingual printing of the ballot or voting system ballot label is not required if a Spanish translation of the ballot is posted in each voting station and a statement in Spanish is placed on the ballot or ballot label informing the voter that the translation is posted in the station.

(b) If a separate translation of the ballot is made under Subsection (a), the translation must be furnished to each voter to whom an early voting ballot to be voted by mail is provided.

(c) An item specified by Section 272.005(c) is not required to contain a Spanish translation if:

- (1) for an item used in connection with voting at a polling place:
 - (A) a separate translation of the item is made available to the voter on request; and
 - (B) the item contains a statement in Spanish informing the voter of the availability of the translation; or
- (2) for an item used in connection with early voting by mail, a separate translation of the item is furnished with the item to the voter.

Amended by Acts 1991, 72nd Leg., ch. 203, § 2.75; Acts 1991, 72nd Leg., ch. 554, § 46, eff. Sept. 1, 1991.

Historical and Statutory Notes

1991 Legislation

For contingent effective provision of Acts 1991, 72nd Leg., ch. 203, see Historical and Statutory Notes following § 141.034.

§ 272.010. **Voter Registration Application Form**

(a) The secretary of state shall prescribe a voter registration application form that is printed in Spanish or shall include a Spanish translation beneath the text of the English-language registration application form prescribed by the secretary.

(b) The voter registrar for each county containing an election precinct subject to Section 272.002 shall maintain a supply of the form required by Subsection (a) and shall keep a notice in Spanish posted at the place in the registrar's office where voter registration is conducted stating that application forms in Spanish are available.

(c) The form required by Subsection (a) may be used in any county in this state.
Amended by Acts 1997, 75th Leg., ch. 864, § 253, eff. Sept. 1, 1997.

**CHAPTER 273. CRIMINAL INVESTIGATION AND
OTHER ENFORCEMENT PROCEEDINGS**

**SUBCHAPTER A. CRIMINAL
INVESTIGATION**

- Section
273.001. Investigation of Criminal Conduct.
273.003. Impounding Election Records.

**SUBCHAPTER B. PROSECUTION
BY ATTORNEY GENERAL**

- 273.021. Prosecution by Attorney General Authorized.

Section

**SUBCHAPTER C. EXAMINATION OF
BALLOTS BY GRAND JURY**

- 273.041. Request to Examine Ballots.
273.042. Order by District Judge.
273.043. Conduct of Examination.

**SUBCHAPTER D. MANDAMUS
BY APPELLATE COURT**

- 273.063. Venue in Court of Appeals.

Library References

Enforcement of election laws, see Brooks, 36
Texas Practice § 21.26.

SUBCHAPTER A. CRIMINAL INVESTIGATION

Library References

Other election remedies, election offenses, see
Brooks, 35 Texas Practice § 11.26.

§ 273.001. Investigation of Criminal Conduct

(a) If two or more registered voters of the territory covered by an election present affidavits alleging criminal conduct in connection with the election to the county or district attorney having jurisdiction in that territory, the county or district attorney shall investigate the allegations. If the election covers territory in more than one county, the voters may present the affidavits to the attorney general, and the attorney general shall investigate the allegations.

(b) A district or county attorney having jurisdiction or the attorney general may conduct an investigation on the officer's own initiative to determine if criminal conduct occurred in connection with an election.

(c) On receipt of an affidavit under Section 15.028, the county or district attorney having jurisdiction and, if applicable, the attorney general shall investigate the matter.

(d) On referral of a complaint from the secretary of state under Section 31.006, the attorney general may investigate the allegations.

Amended by Acts 1998, 78rd Leg., ch. 728, § 78, eff. Sept. 1, 1998; Acts 1998, 78rd Leg., ch. 916, § 26, eff. Sept. 1, 1998.

§ 273.003. Impounding Election Records

(a) In the investigation of an election, a county or district attorney or the attorney general may have impounded for the investigation the election returns, voted ballots, signature roster, and other election records.

(b) To have election records impounded, the investigating officer must apply to a district court for an order placing the election records in the court's custody for examination by the officer.

(c) The application for impoundment must be filed with the district court of the county in which the election was held or an adjoining county. An application for records of a statewide

election may be filed in the county in which the election was held, an adjoining county, or Travis County.

(d) On the filing of an application, the district judge shall issue an order impounding the records in a secure place under the terms and conditions the judge considers necessary to keep them under the judge's custody and control during the examination and for any additional time the judge directs.

Amended by Acts 1997, 75th Leg., ch. 864, § 254, eff. Sept. 1, 1997.

SUBCHAPTER B. PROSECUTION BY ATTORNEY GENERAL

§ 273.021. Prosecution by Attorney General Authorized

(a) The attorney general may prosecute a criminal offense prescribed by the election laws of this state.

(b) The attorney general may appear before a grand jury in connection with an offense the attorney general is authorized to prosecute under Subsection (a).

(c) The authority to prosecute prescribed by this subchapter does not affect the authority derived from other law to prosecute the same offenses.

Amended by Acts 1993, 73rd Leg., ch. 723, § 79, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 864, § 255, eff. Sept. 1, 1997.

SUBCHAPTER C. EXAMINATION OF BALLOTS BY GRAND JURY

Library References

Election challenges, contests, see Brooks, 35 Texas Practice § 11.23.

§ 273.041. Request to Examine Ballots

In the investigation of criminal conduct in connection with an election, a grand jury, on finding probable cause to believe an offense was committed, may request a district judge of the county served by the grand jury to order an examination of the voted ballots and the ballot stubs in the election.

Amended by Acts 1997, 75th Leg., ch. 1078, § 22, eff. Sept. 1, 1997.

§ 273.042. Order by District Judge

On request of a grand jury for an examination of voted ballots and ballot stubs, a district judge may order the custodian of the ballots and ballot stubs and the custodian of the keys to the ballot boxes to deliver the ballot boxes, keys, and envelopes to the grand jury.

Amended by Acts 1997, 75th Leg., ch. 1078, § 22, eff. Sept. 1, 1997.

§ 273.043. Conduct of Examination

The examination of ballots and ballot stubs under this subchapter shall be conducted in secret before the grand jury.

Amended by Acts 1997, 75th Leg., ch. 1078, § 22, eff. Sept. 1, 1997.

SUBCHAPTER D. MANDAMUS BY APPELLATE COURT

§ 273.061. Jurisdiction

Library References

Other election remedies, see Brooks, 35 Texas Practice § 11.25.

Notes of Decisions

Eligibility of candidates	17.5
Exhaustion of remedies	3.5

2. In general

Courts may review, by mandamus, actions of persons upon whom duties are imposed by law in connection with holding of election or a party convention. *Wentworth v. Meyer* (App. 4 Dist. 1992) 837 S.W.2d 148, mandamus conditionally granted, subsequent mandamus proceeding 839 S.W.2d 766.

Failure of election official to review applications and submit correct list of candidates to proper authorities will subject official to mandamus; Court of Appeals has mandamus power to direct official to correct his or her mistake, or failure to act, committed during pendency of his or her authority. *Escobar v. Sutherland* (App. 8 Dist. 1996) 917 S.W.2d 399.

3. Remedy in district court

Challenge to an application to place name on election ballot based on noncompliance with applicable requirements as to form, content, and procedure, if made after the county chair has lost authority to act, must either be made to an appellate court as an original proceeding in mandamus or to the county or district courts as an application for injunctive relief. *Escobar v. Sutherland* (App. 8 Dist. 1996) 917 S.W.2d 399.

3.5. Exhaustion of remedies

If city charter required petitioners to exhaust their administrative remedies before seeking mandamus relief for failure of city council to call recall election once petition was filed, they did so by asking county judge to order recall election, though the judge refused, and writ of mandamus could be issued. *Duffy v. Branch* (App. 5 Dist. 1992) 828 S.W.2d 211.

6. Courts of Appeals

Supreme Court's overruling of relator's motion for leave to file without comment did not preclude Court of Appeals from assuming jurisdiction of relator's petition for original writ of mandamus to compel chairman of state political party to accept relator's application to have his name placed upon official ballot of general primary election of party. *Brown v. Strake* (App. 1 Dist. 1986) 706 S.W.2d 148, subsequent mandamus proceeding 704 S.W.2d 746.

Mandamus relief to compel performance of any duty imposed by law in connection with holding of election lies exclusively with appellate courts of state, not with its district courts. *Bejarano v. Moody* (App. 8 Dist. 1995) 901 S.W.2d 570, rehearing overruled.

13. Duty imposed by law—In general

Assertion that allegations in recall petition were insufficient was irrelevant in action for writ of mandamus to compel calling of a recall election,

where city charter did not give city officials right to review petition for validity, though sufficiency arguments could be heard in district court, which could enjoin election if petition was insufficient. *Duffy v. Branch* (App. 5 Dist. 1992) 828 S.W.2d 211.

Recall provision of city charter required city council member to vote affirmatively for his own recall election upon receipt of a recall petition, and permitted city council member no discretion either to vote against the recall election or to abstain from voting. *Duffy v. Branch* (App. 5 Dist. 1992) 828 S.W.2d 211.

Although appellate courts have no ability to resolve factual disputes in mandamus action, where petition is lacking on its face, Court of Appeals may issue mandamus ordering certifying official to reject would-be candidate's application. *Bejarano v. Hunter* (App. 8 Dist. 1995) 899 S.W.2d 346.

City clerk lacked discretion to accept applications for candidacy for city office that did not fully comply with application requirements, and so was subject to mandamus for accepting insufficient application. *Bejarano v. Hunter* (App. 8 Dist. 1995) 899 S.W.2d 346.

Although issue of whether candidate's opponent's name should have been stricken from ballot for failing to fully comply with application requirements was moot, Court of Appeals would address issue on merits under capable of repetition yet evading review exception to mootness doctrine, since city clerk's longstanding refusal to comply with application law that clerk considered superfluous and unnecessary rendered matter capable of repetition, and tight time constraints for bringing challenge, which allowed only fleeting opportunity for appellate review, met evading review requirement. *Bejarano v. Hunter* (App. 8 Dist. 1995) 899 S.W.2d 346.

16. Primary elections

Candidate was not entitled to mandamus relief compelling Secretary of State to accept his certification as candidate in primary election, where candidate had not yet been certified by state party chairman. *LaRouche v. Hannah* (Sup. 1992) 822 S.W.2d 632.

17.5. Eligibility of candidates

The Supreme Court had jurisdiction to entertain petition for writ of mandamus which sought declaration ordering Chairman of Republican Party to declare candidate in Republican Party primary for Justice of Supreme Court ineligible, and ordering Secretary of State not to certify the candidate as a nominee for the office of Justice of the Supreme Court. *Sears v. Bayoud* (Sup. 1990) 786 S.W.2d 248.

18. Fact issues

Writ of mandamus would not be appropriate to require mayor to remove name from ballot on ground that application for place on ballot did not comply with statutory requirements, where claims

§ 273.061

Note 18

asserted required factual determination. *Strachan v. Lanier* (App. 1 Dist. 1993) 867 S.W.2d 52, rehearing denied.

MISCELLANEOUS PROVISIONS

Title 16

§ 273.063. Venue in Court of Appeals

(a) A petition to a court of appeals for a writ of mandamus under this subchapter must be filed with the court specified by this section.

(b) A petition pertaining to an election must be filed with the court of the court of appeals district in which:

(1) the respondent resides, or in which one of them resides if there is more than one respondent, if the election is statewide; or

(2) the territory covered by the election is wholly or partly situated, if the election is not statewide.

(c) A petition pertaining to a political party convention must be filed with the court of the court of appeals district in which:

(1) the respondent resides, or in which one of them resides if there is more than one respondent, for a state convention;

(2) the territory represented by the convention delegates is wholly or partly situated, for a district convention; or

(3) the precinct or county is situated, for a precinct or county convention.

Amended by Acts 1987, 70th Leg., ch. 54, § 15(c), eff. Sept. 1, 1987.

Historical and Statutory Notes

1987 Legislation

The 1987 amendatory act, to conform this act to Const. Art. V, § 6, amended by Acts 1985, 69th

Leg., S.J.R. No. 14, substituted "court of appeals" for "supreme judicial" in subsections (b) and (c).

SUBCHAPTER E. INJUNCTION

§ 273.081. Injunction

Library References

Other election remedies, see *Brooks*, 35 Texas Practice § 11.25.

Notes of Decisions

2. Construction and application

Factual disputes as to candidate's eligibility to be city council member must be resolved in accordance with statute providing harmed person with remedy of injunctive relief to prevent violations of Election Code, rather than in mandamus proceeding. In re *Jackson* (App. 10 Dist. 2000) 14 S.W.3d 843.

3. Jurisdiction

Challenge to an application to place name on election ballot based on noncompliance with applicable requirements as to form, content, and procedure, if made after the county chair has lost authority to act, must either be made to an appellate court as an original proceeding in mandamus or to the county or district courts as an application for

injunctive relief. *Escobar v. Sutherland* (App. 8 Dist. 1996) 917 S.W.2d 399.

4. Parties

Lydick v. Chairman of Dallas County Republican Executive Committee (Civ.App. 1970) [main volume] 456 S.W.2d 740.

Chairman of county democratic party, who was not candidate for office, lacked standing to bring suit to permanently enjoin county republican executive committee from submitting, certifying, allowing or permitting candidacy of three republican candidates in general election. *Colvin v. Ellis County Republican Executive Committee* (App. 10 Dist. 1986) 719 S.W.2d 265.

CHAPTER 274. CONSTITUTIONAL AMENDMENTS
SUBCHAPTER A. AMENDMENT ON BALLOT

§ 274.001. Form of Amendment on Ballot

Notes of Decisions

Ballot language 3

1. Construction and application

It is not necessary to include all relevant details or to print entire proposed constitutional amendment on ballot. *Rooms With a View, Inc. v. Private Nat. Mortg. Ass'n, Inc.* (App. 3 Dist. 1999) 7 S.W.3d 840, petition for review denied, certiorari denied 121 S.Ct. 72, 531 U.S. 826, 148 L.Ed.2d 36.

2. Presumptions

Voters are presumed to be familiar with proposed constitutional amendment's actual content before entering voting booth, and ballot language need only give fair notice to voter of average intelligence by directing him to amendment so that he can discern its identity and distinguish it from other propositions on ballot. *Rooms With a View,*

Inc. v. Private Nat. Mortg. Ass'n, Inc. (App. 3 Dist. 1999) 7 S.W.3d 840, petition for review denied, certiorari denied 121 S.Ct. 72, 531 U.S. 826, 148 L.Ed.2d 36.

3. Ballot language

Ballot language describing proposed constitutional amendment as expanding types of liens for home equity loans that lender, with homeowner's consent, may place against homestead fairly expressed scope and character of proposed amendment which primarily allowed home equity loans against homestead property, even though ballot did not refer to changes proposed to method of imposing mechanics' liens. *Rooms With a View, Inc. v. Private Nat. Mortg. Ass'n, Inc.* (App. 3 Dist. 1999) 7 S.W.3d 840, petition for review denied, certiorari denied 121 S.Ct. 72, 531 U.S. 826, 148 L.Ed.2d 36.

CHAPTER 276. MISCELLANEOUS OFFENSES AND OTHER PROVISIONS

Section

- 276.001. Retaliation Against Voter.
- 276.002. Repealed.
- 276.003. Unlawful Removal From Ballot Box.
- 276.004. Unlawfully Prohibiting Employee From Voting.

Section

- 276.006. Changing Electoral Boundaries of Certain Political Subdivisions.
- 276.007. Student Election Authorized.
- 276.008. Information Provided to Texas Legislative Council.
- 276.009. Voting by Sequestered Juror.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

§ 276.001. Retaliation Against Voter

(a) A person commits an offense if, in retaliation against a voter who has voted for or against a candidate or measure or a voter who has refused to reveal how the voter voted, the person knowingly:

- (1) harms or threatens to harm the voter by an unlawful act; or
- (2) with respect to a voter over whom the person has authority in the scope of employment, subjects or threatens to subject the voter to a loss or reduction of wages or another benefit of employment.

(b) An offense under this section is a felony of the third degree.

Amended by Acts 1997, 75th Leg., ch. 864, § 256, eff. Sept. 1, 1997.

§ 276.002. Repealed by Acts 1993, 73rd Leg., ch. 728, § 94, eff. Sept. 1, 1993

§ 276.003. Unlawful Removal From Ballot Box

(a) A person commits an offense if the person knowingly or intentionally removes or attempts to remove voted ballots from a ballot box in a manner not authorized by law.

(b) An offense under this section is a felony of the third degree unless the person is convicted of an attempt. In that case, the offense is a Class A misdemeanor.

Amended by Acts 1987, 70th Leg., ch. 489, § 1, eff. Sept. 1, 1987.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment, in subsec. (a), inserted “knowingly or intentionally”, and in subsec. (b) substituted “felony of the third degree” for “class A misdemeanor” and “A” for “B” following “class”.

Section 2 of the 1987 amendatory act provides:

“The change in law made by this Act applies only to the punishment for an offense committed

on or after the effective date of this Act. An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.”

Cross References

Punishment,

Felony of the third degree, see V.T.C.A., Penal Code § 12.34.

§ 276.004. Unlawfully Prohibiting Employee From Voting

(a) A person commits an offense if, with respect to another person over whom the person has authority in the scope of employment, the person knowingly:

(1) refuses to permit the other person to be absent from work on election day for the purpose of attending the polls to vote; or

(2) subjects or threatens to subject the other person to a penalty for attending the polls on election day to vote.

(b) It is an exception to the application of this section that the person’s conduct occurs in connection with an election in which the polls are open on election day for voting for two consecutive hours outside of the voter’s working hours.

(c) In this section, “penalty” means a loss or reduction of wages or another benefit of employment.

(d) An offense under this section is a Class C misdemeanor.

Amended by Acts 1993, 73rd Leg., ch. 728, § 80, eff. Sept. 1, 1993.

Law Review and Journal Commentaries

You’re fired—Public policy wrongful discharge after *McClendon*. Lee Crawford, 54 *Tex.B.J.* 330 (1991).

§ 276.006. Changing Electoral Boundaries of Certain Political Subdivisions

A change in a boundary of a territorial unit of a political subdivision other than a county from which an office of the political subdivision is elected is not effective for an election unless the date of the order or other action adopting the boundary change is more than three months before election day.

Added by Acts 1987, 70th Leg., ch. 472, § 59, eff. Sept. 1, 1987. Amended by Acts 1999, 76th Leg., ch. 995, § 1, eff. Jan. 1, 2000.

Library References

Precinct lines and reapportionment, see Brooks, 35 *Texas Practice* § 11.3.

§ 276.007. Student Election Authorized

(a) An election for the participation of students in kindergarten through 12th grade may be held in conjunction with a general, special, or primary election as provided by this section.

Title 16

(b) A student election may be ordered by:

(1) the commissioners court, for a student election held in conjunction with an election ordered by the governor or a county authority;

(2) the governing body of a political subdivision, for a student election held in conjunction with an election of the political subdivision; or

(3) the county executive committee, for a student election held in conjunction with a primary election.

(c) A student election may be held only on election day or the day before election day.

(d) The authority ordering a student election shall specify in the order each grade that may participate in the election. A student in a specified grade may enter a precinct polling place for the purpose of casting an unofficial ballot in the student election on the same offices and measures that appear on the official ballot.

(e) The authority ordering a student election shall make the results of that election available to the public but only after the polling places are closed on election day.

(f) The election officers serving in the official election may not serve in the student election. The authority ordering a student election shall appoint a separate set of election officers to conduct the student election, supervise the participating students, and tabulate and report the results of that election.

(g) Expenses incurred in the conduct of a student election, including any personnel expenses, may be paid only from private grant funds or donations.

(h) The secretary of state shall prescribe any procedures necessary to implement this section and ensure that the conduct of a student election does not affect the proper and efficient conduct of a general, special, or primary election.

Added by Acts 1991, 72nd Leg., ch. 887, § 1, eff. Sept. 1, 1991.

§ 276.008. Information Provided to Texas Legislative Council

(a) On the written request of the Texas Legislative Council, the secretary of state, a county clerk or county elections administrator, a city secretary, or a voter registrar shall provide without charge to the council information or data maintained by the appropriate officer relating to voter registration, voter turnout, election returns for statewide, district, county, precinct, or city offices, or county election precincts, including precinct maps.

(b) The appropriate officer shall provide the requested information or data to the council as soon as practicable but not later than the 30th day after the date the request is received by that officer.

(c) The information or data shall be provided in a form approved by the council.

Renumbered from V.T.C.A. Government Code, § 323.013 and amended by Acts 1993, 73rd Leg., ch. 107, § 3A.02, eff. Aug. 30, 1993; Amended by Acts 1999, 76th Leg., ch. 1585, § 3, eff. June 20, 1999.

Historical and Statutory Notes

1993 Legislation

The 1993 amendatory act transferred this section from V.T.C.A. Government Code, § 323.013; in the section heading, substituted "Information Provided to Texas Legislative Council" for "Elec-

tion Information Provided to Council"; in subsec. (a), substituted "Texas Legislative Council" for "council", and "secretary of state" for "Secretary of State"; and in subsec. (b), following "date", deleted "on which".

§ 276.009. Voting by Sequestered Juror

(a) The judge of a court that has issued an order that a jury not be allowed to separate shall permit a juror reasonable time to vote on election day.

(b) The court may provide the juror with a means of transportation to and from the appropriate polling place.

Added by Acts 1995, 74th Leg., ch. 236, § 1, eff. Sept. 1, 1995.

CHAPTER 277. PETITION PRESCRIBED BY LAW OUTSIDE CODE

Section		Section	
277.001.	Applicability of Chapter.	277.0023.	Supplementing Petition.
277.002.	Validity of Petition Signatures.	277.0024.	Computing Number of Signatures.
277.0021.	Meaning of Qualified Voter.	277.003.	Verifying Signatures by Statistical Sample.
277.0022.	Withdrawal of Signature.	277.004.	Effect of City Charter or Ordinance.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

Library References

Conduct of elections, ordering elections, see Brooks, 35 Texas Practice § 11.10.

§ 277.001. Applicability of Chapter

This chapter applies to a petition authorized or required to be filed under a law outside this code in connection with an election, except a petition for a local option election held under the Alcoholic Beverage Code.

Added by Acts 1987, 70th Leg., ch. 54, § 16(c), eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 728, § 81, eff. Sept. 1, 1993.

Historical and Statutory Notes

Prior Laws: Acts 1985, 69th Leg., ch. 895, § 1.
Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 8e. V.A.T.S. Election Code, art. 1.08e.

Notes of Decisions

In general 1

1. In general

City, in conducting election to repeal collective bargaining rights for police and firefighters, was required to comply with form and content requirements for petitions as set forth in election code. City of Sherman v. Hudman (App. 5 Dist. 1999) 996 S.W.2d 904, review granted, vacated.

Petition requirements of election code apply to repeal petitions brought under local government

code setting forth requirements for adoption and repeal of collective bargaining rights for police and firefighters, to the extent election code requirements do not conflict with requirements contained in the local government code. City of Sherman v. Hudman (App. 5 Dist. 1999) 996 S.W.2d 904, review granted, vacated.

Petition signatures for collective bargaining election under the Fire and Police Employee Relations Act must comport with the requirements of this section. Election Law Opinion No. JH-4.

§ 277.002. Validity of Petition Signatures

(a) For a petition signature to be valid, a petition must:

(1) contain in addition to the signature:

(A) the signer's printed name;

(B) the signer's date of birth and the signer's voter registration number and, if the territory from which signatures must be obtained is situated in more than one county, the county of registration;

(C) the signer's residence address; and

(D) the date of signing; and

(2) comply with any other applicable requirements prescribed by law.

(b) The signature is the only information that is required to appear on the petition in the signer's own handwriting.

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(c) The use of ditto marks or abbreviations does not invalidate a signature if the required information is reasonably ascertainable.

(d) The omission of the state from the signer's residence address does not invalidate a signature unless the political subdivision from which the signature is obtained is situated in more than one state. The omission of the zip code from the address does not invalidate a signature.

(e) A petition signature is invalid if the signer signed the petition earlier than the 180th day before the date the petition is filed.

Added by Acts 1987, 70th Leg., ch. 54, § 16(c), eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 728, § 82, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1349, § 73, eff. Sept. 1, 1997.

Historical and Statutory Notes

Prior Laws:

Acts 1985, 69th Leg., ch. 895, § 1.

Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 8e.

V.A.T.S. Election Code, art. 1.08e.

Notes of Decisions

Address 2

Compliance 3

Time limit 4

Verification of eligibility 1

1. Verification of eligibility

For purposes of state statutory mandates regarding what will or will not invalidate voter petition signatures, main factor considered in assessing how much deviation from statute is permissible is to what extent deviation will impair ability to verify eligibility of signer. *Lee v. Smith, E.D.Tex. 1996, 927 F.Supp. 205.*

Main factor generally employed in determining what degree of deviation from election code will be allowed for voter petition signatures is whether deviation will impair ability to verify eligibility of voter. *Reese v. Commissioners' Court of Cherokee County (App. 12 Dist. 1993) 861 S.W.2d 281.*

2. Address

Failure of voters to include their zip code on petition for adoption of optional county road system did not invalidate otherwise valid petition signatures and, thus, writ of mandamus was warranted to compel county commissioner's court to place road system proposition on next election ballot pursuant to County Road and Bridge Act; inclusion of zip code would not help verify eligibility of those who signed petition. *Reese v. Commissioners' Court of Cherokee County (App. 12 Dist. 1993) 861 S.W.2d 281.*

3. Compliance

Election statutes and city charter regarding petitions used mandatory language, such as "may not" and "shall contain," in setting forth require-

ments for properly calling an election, and thus, such requirements were mandatory for initiative petition to repeal collective bargaining rights for police and firefighters. *City of Sherman v. Hudman (App. 5 Dist. 1999) 996 S.W.2d 904, review granted, vacated.*

Courts are to construe the provisions of election statutes and city charters that relate to voters as directory whereas the provisions which relate to what is required of candidates are mandatory. *City of Sherman v. Hudman (App. 5 Dist. 1999) 996 S.W.2d 904, review granted, vacated.*

Even assuming requirements for petitions, as set forth in election statutes and city charter, were merely directive and not mandatory, city failed to substantially comply with such requirements, and thus, initiative petitions were insufficient to confer authority on city to call election to repeal collective bargaining rights for police and firefighters and election was void, where no single petition form contained required number of signatures, none of the petition forms contained the full language of the proposed ordinance to be voted upon, and the forms contained different committees of five electors. *City of Sherman v. Hudman (App. 5 Dist. 1999) 996 S.W.2d 904, review granted, vacated.*

4. Time limit

Provision of Texas Election Code invalidating signatures obtained more than 180 days before filing of petition did not guarantee citizens protesting county's issuance of certificates of obligation 180 days to circulate petition to force election on issue. *Lee v. Commissioners' Court of Jefferson County, Texas, E.D.Tex.2000, 81 F.Supp.2d 712, affirmed 252 F.3d 434.*

§ 277.0021. Meaning of Qualified Voter

A reference in a law outside this code to "qualified voter" in the context of eligibility to sign a petition means "registered voter."

Added by Acts 1989, 71st leg., ch. 433, § 1, eff. Sept. 1, 1989.

Library References

Voter eligibility, see Brooks, 35 Texas Practice
§ 11.7.

Notes of Decisions

In general 1

1. In general

"Qualified voters" within meaning of statute voiding civil service system in city if majority of

qualified voters vote for repeal meant qualified voters in election; thus, repeal was possible without vote of majority of registered voters. City of Stephenville v. Walker (App. 11 Dist. 1992) 841 S.W.2d 566, rehearing denied, writ denied, rehearing of writ of error overruled.

§ 277.0022. Withdrawal of Signature

(a) A signer may not withdraw the signature from a petition on or after the date the petition is received by the authority with whom it is required to be filed. Before that date, a signer may withdraw the signature by deleting the signature from the petition or by filing with the authority with whom the petition is required to be filed an affidavit requesting that the signature be withdrawn from the petition.

(b) A withdrawal affidavit filed by mail is considered to be filed at the time of its receipt by the appropriate authority.

(c) The withdrawal of a signature nullifies the signature on the petition and places the signer in the same position as if the signer had not signed the petition.

Added by Acts 1993, 73rd Leg., ch. 728, § 83, eff. Sept. 1, 1993.

§ 277.0023. Supplementing Petition

(a) Except as provided by Subsection (b), a petition may not be supplemented, modified, or amended on or after the date it is received by the authority with whom it is required to be filed unless expressly authorized by law.

(b) If a petition is required to be filed by a specified deadline, the petitioner may file one supplementary petition by that deadline if the original petition contains a number of signatures that exceeds the required minimum number by 10 percent or more and is received by the authority with whom it is required to be filed not later than the 10th day before the date of the deadline. The authority shall notify the petitioner as to the sufficiency of the petition not later than the fifth regular business day after the date of its receipt.

Added by Acts 1993, 73rd Leg., ch. 728, § 83, eff. Sept. 1, 1993.

Notes of Decisions

In general 1

1. In general

There was sufficient evidence that city violated election code by allowing supplementation of initiative petition to repeal collective bargaining rights

for police and firefighters, and thus, city clerk was without authority to certify petition, where 37 petition forms were submitted, date stamps on forms indicated they were filed at various dates and times, and city treated such forms as one petition. City of Sherman v. Hudman (App. 5 Dist. 1999) 996 S.W.2d 904, review granted, vacated.

§ 277.0024. Computing Number of Signatures

If the minimum number of signatures required for a petition is determined by a computation applied to the number of registered voters of a particular territory, voters whose names appear on the list of registered voters with the notation "S", or a similar notation, shall be excluded from the computation.

Added by Acts 1995, 74th Leg., ch. 797, § 43, eff. Sept. 1, 1995.

§ 277.003. Verifying Signatures by Statistical Sample

If a petition contains more than 1,000 signatures, the city secretary or other authority responsible for verifying the signatures may use any reasonable statistical sampling method

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in determining whether the petition contains the required number of valid signatures, except that the sample may not be less than 25 percent of the total number of signatures appearing on the petition or 1,000, whichever is greater. If the signatures on a petition circulated on a statewide basis are to be verified by the secretary of state, the sample prescribed by Section 141.069 applies to the petition rather than the sample prescribed by this section.

Added by Acts 1987, 70th Leg., ch. 54, § 16(c), eff. Sept. 1, 1987.

Historical and Statutory Notes

Prior Laws: Acts 1985, 69th Leg., ch. 895, § 1.
 Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 8e. V.A.T.S. Election Code, art. 1.08e.

§ 277.004. Effect of City Charter or Ordinance

Any requirements for the validity or verification of petition signatures in addition to those prescribed by this chapter that are prescribed by a home-rule city charter provision or a city ordinance are effective only if the charter provision or ordinance was in effect September 1, 1985.

Added by Acts 1987, 70th Leg., ch. 54, § 16(c), eff. Sept. 1, 1987.

Historical and Statutory Notes

Prior Laws: Acts 1985, 69th Leg., ch. 895, § 1.
 Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 8e. V.A.T.S. Election Code, art. 1.08e.

Notes of Decisions

In general 1

ments were in effect on September 1, 1985. City of Sherman v. Hudman (App. 5 Dist. 1999) 996 S.W.2d 904, review granted, vacated.

1. In general

Petition to repeal collective bargaining rights for police and firefighters was essentially a petition by electors requesting city to pass an ordinance calling for a repeal election, and thus was an initiative petition that was subject to charter provisions relating to petition requirements for initiative petitions, where city was a home-rule city and its charter provisions relating to petition require-

City's failure to comply with city charter provision, which required initiative petition form to contain full text of ordinance to be repealed, precluded city clerk from certifying petition to repeal collective bargaining rights for police and firefighters, even though petition was entitled referendum petition, and not initiative petition. City of Sherman v. Hudman (App. 5 Dist. 1999) 996 S.W.2d 904, review granted, vacated.

CHAPTER 278. VOTER INFORMATION GUIDE FOR JUDICIAL ELECTIONS

Section	Section
278.001. Applicability of Chapter.	278.005. Review by Secretary of State.
278.002. Internet Voter Information Guide.	278.006. Preparation of Guide.
278.003. Statement Filed by Candidate.	278.007. Availability of Guide.
278.004. Statement Requirements.	278.008. Additional Procedures.

§ 278.001. Applicability of Chapter

This chapter applies to each candidate whose name is to appear on the ballot or a list of declared write-in candidates in a judicial election.

Added by Acts 2001, 77th Leg., ch. 1285, § 1, eff. Sept. 1, 2001.

§ 278.002. Internet Voter Information Guide

The secretary of state may implement a voter information service program to:

- (1) compile information on candidates for election in the form of a voter information guide; and

(2) make the guide available to the public on the Internet.

Added by Acts 2001, 77th Leg., ch. 1285, § 1, eff. Sept. 1, 2001.

§ 278.003. Statement Filed by Candidate

If the secretary of state implements a voter information service program, a candidate may file with the secretary not later than the 70th day before the date of the judicial election an informational statement, on a form prescribed by the secretary, to be included in the voter information guide for that election.

Added by Acts 2001, 77th Leg., ch. 1285, § 1, eff. Sept. 1, 2001.

§ 278.004. Statement Requirements

(a) A candidate's statement must include a summary of the following information:

- (1) current occupation;
- (2) educational and occupational background;
- (3) biographical information; and
- (4) any previous experience serving in government.

(b) The secretary of state may prescribe the format and length of the candidate's statement.

Added by Acts 2001, 77th Leg., ch. 1285, § 1, eff. Sept. 1, 2001.

§ 278.005. Review by Secretary of State

(a) Not later than the fifth day after the date the candidate's statement is received, the secretary of state may review the statement to determine whether it complies with this chapter.

(b) If the secretary of state determines that the statement does not comply with the applicable requirements, the secretary may reject the statement and deliver written notice of the reason for the rejection to the candidate not later than the second day after the date of rejection.

(c) A candidate whose statement is rejected may resubmit the statement subject to the prescribed deadline.

Added by Acts 2001, 77th Leg., ch. 1285, § 1, eff. Sept. 1, 2001.

§ 278.006. Preparation of Guide

(a) The secretary of state may contract for the preparation of the voter information guide after soliciting bids for that work. The secretary may prepare the guide if the secretary determines that the costs of that preparation are less than or equal to the most reasonable bid submitted.

(b) The voter information guide must include the candidates' statements that comply with this chapter, with candidates for election and write-in candidates for election as separate groups. The order of the candidates' names within the groups is determined by a drawing conducted by the secretary of state.

(c) The secretary of state may prescribe appropriate explanatory material to be included in the voter information guide to assist the voters, including a statement that the guide may be used at the polls to assist the voters in marking their ballots.

Added by Acts 2001, 77th Leg., ch. 1285, § 1, eff. Sept. 1, 2001.

§ 278.007. Availability of Guide

If the secretary of state implements a voter information service program, the secretary may make the voter information guide available to the public on the Internet not later than the 45th day before the date of each judicial election.

Added by Acts 2001, 77th Leg., ch. 1285, § 1, eff. Sept. 1, 2001.

§ 278.008. Additional Procedures

The secretary of state may prescribe any additional procedures necessary to implement this chapter.

Added by Acts 2001, 77th Leg., ch. 1285, § 1, eff. Sept. 1, 2001.

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