



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 109

December 10, 1992

Whether the Texas Ethics Commission has authority to impose penalties for improper reporting of a contribution under title 15 of the Election Code if the violation of title 15 occurred before January 1, 1992. (AOR-122)

A question has been raised about the authority of the Texas Ethics Commission to impose penalties for improper reporting of a contribution under title 15 of the Election Code if the violation of title 15 occurred before January 1, 1992.

In 1991 the Texas Legislature adopted Senate Bill 1, which gave the Ethics Commission authority to administer and enforce title 15 of the Election Code.¹ S.B. 1, Acts 1991, 72d Leg., ch. 304, § 1.11(a)(1), at 1292 (now codified at section 1.11(a)(1) of article 6252-9d.1, V.T.C.S.). The commission is authorized to investigate and conduct proceedings in regard to alleged violations of title 15, on its own motion or on a sworn complaint. V.T.C.S. art. 6252-9d.1, §§ 1.11(b)(2), 1.13 - 1.26. The commission may impose sanctions for violations of title 15. *Id.* § 1.28. The provisions for such proceedings and sanctions are new. The secretary of state, which was the Ethics Commission's predecessor in administering title 15, did not have such authority.²

The requestor asks whether the Ethics Commission may impose sanctions under section 1.28 for improperly reporting a contribution under title 15 if the improper reporting occurred before January 1, 1992. The effective date provision in Senate Bill 1 states in part as follows:

(a) Except as provided by Subsection (d) of this section [not relevant here], 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.

S.B. 1, Acts 1991, 72d Leg., ch. 304, § 8.01(a) - (b), at 1337. That language makes clear that the new enforcement provisions in Senate Bill 1 do not apply to a contribution made before January 1, 1992. *See* V.T.C.S. art. 6252.9d.1, § 1.13(d) (stating that the Ethics Commission may not audit reports filed before January 1, 1992, under a law previously administered and enforced by the secretary of state).

Also, the Texas Constitution prohibits retroactive laws. Tex. Const. art. I, § 16. An unconstitutional retroactive law is one that imposes new disabilities in respect to past transactions. *Ex parte Abell*, 613 S.W.2d 255 (Tex. 1981). Changes that are procedural in nature and affect no vested rights are not prohibited by article I, section 16, of the constitution. The possibility of an additional monetary penalty is clearly a new disability, rather than a procedural change. Therefore, we conclude that even absent the effective date language set out above, the Texas Constitution would not permit the Ethics Commission to impose sanctions under section 1.28 for violations of

title 15 that occurred before January 1, 1992. Such violations may, of course, still be subject to criminal prosecution, depending on whether the statute of limitations has run.

SUMMARY

The Texas Ethics Commission does not have authority to impose sanctions under section 1.28 of article 6252-9d.1, V.T.C.S., for violations of title 15 of the Election Code that occurred before January 1, 1992.

¹ The bill also gave the Ethics Commission authority to administer and enforce chapters 302 and 305 of the Government Code and V.T.C.S. article 6252-9b. V.T.C.S. art. 6252-9d.1, § 1.11(a)(1).

² The secretary of state's authority to impose penalties under title 15 was limited to the imposition of fines for late filings. Elec. Code § 254.042. Senate Bill 1 raised the maximum penalties that can be imposed for late filings. *Id.* § 254.042(b); S.B. 1, Acts 1991, 72d Leg., ch. 304, § 5.13, at 1328. Senate Bill 1 did not change the criminal penalties set out in title 15. (Senate Bill 1 did add a new chapter to title 15, which contains criminal penalties for violation of its provisions. Elec. Code ch. 257.)