



# TEXAS ETHICS COMMISSION



## ETHICS ADVISORY OPINION NO. 330

*June 14, 1996*

*Whether an individual who files an application under chapter 181 or 182 of the Election Code to be considered for nomination at a party convention is required to file a personal financial disclosure statement under section 572.027(a) of the Government Code and, if so, whether providing notice to the state party chair of an intent to withdraw from consideration by the deadline for filing the personal financial disclosure statement relieves an individual of that obligation. (AOR-368)*

The Texas Ethics Commission has been asked to consider the application of section 572.027(a) of the Government Code to individuals who filed applications under chapter 181 or 182 of the Election Code to be considered for nomination at a party convention.

All partisan and independent candidates for statewide offices, the legislature, courts of appeal, district courts, and the State Board of Education must file personal financial disclosure statements. Gov't Code § 572.021. The filing deadlines for candidates are set out in section 572.027 of the Government Code. Subsection (a) of section 572.027 provides as follows:

Not later than the 40th day after the date of the regular filing deadline for an application for a place on the ballot in the general primary election, an individual who is a partisan or independent candidate for an office as an elected officer shall file the financial statement required by this subchapter.

Although the deadline set out in subsection (a) is calculated by reference to the deadline for filing an application for a place on a primary election ballot, the filing requirement applies not only to candidates in a party primary election but also to other partisan candidates and to independent candidates. Consequently, the Ethics Commission sends notice of the upcoming filing deadline to any individual who has filed either an application for a place on the ballot in a party primary election, an application for consideration for nomination at a party convention, or a declaration of intent to run as an independent candidate. These filings are the only information available to the Ethics Commission to identify candidates at the time of the filing deadline for candidates' personal financial disclosure statements.

Certain individuals who received notices to file personal financial disclosure statements because they had filed applications for consideration for nomination at a party convention have argued that they were not in fact candidates but were rather "placeholders"<sup>1</sup> and were therefore not required to file. In our opinion, however, an individual who has filed an application for consideration for nomination at a party convention and who has not withdrawn that application by the deadline for filing a personal financial disclosure statement is a "partisan candidate" required to file such a statement.

To be entitled to be considered for nomination at a party convention, an individual must make an application for nomination by 5:00 p.m. on the January 2 preceding the party's convention. Elec. Code §§ 181.033; 182.0041. January 2 is also the deadline for candidates in a party primary election to apply for a place on the ballot and for potential independent candidates to file a declaration of intent to run as an independent candidate. *Id.* §§ 172.023, 142.002. The Election Code refers to an individual who has filed such an application as a "candidate." *Id.* §§ 181.032(b), 181.033(b). Such an individual is in a position comparable to that of an individual who has

applied for a place on a primary election ballot, in that he or she has taken the steps necessary for consideration for nomination by a political party. We conclude, therefore, that an individual who files an application to be considered for nomination at a party convention under chapter 181 or 182 of the Election Code is a "partisan candidate" for purposes of section 572.027(a) of the Government Code and is required to file a personal financial disclosure statement by the deadline set out in that section.

Before the February 12, 1996, deadline for candidates to file personal financial disclosure statements, Ethics Commission staff explained to several callers that neither the Election Code nor the Government Code recognized "placeholders" as a category separate from "candidates" and that any individual who had filed an application for consideration for nomination at a party convention was subject to the filing requirement unless he or she withdrew the application by the February 12 filing deadline. Following that advice, several individuals apparently gave notice of their desire to withdraw their applications to the state chair of their party. The requestor has asked that the Ethics Commission issue an opinion stating that the requirement to file a personal financial disclosure statement does not apply to individuals who notified their party's state chair by the February 12 deadline of their intent to withdraw their applications for consideration for nomination at the party convention.

Although section 181.033 the Election Code acknowledges the possibility of withdrawing an application for consideration for nomination at a party convention, the Election Code does not set out a mechanism for doing so. Because an application for consideration for nomination as a candidate for a statewide or district office is filed with the state party chair, however, it was reasonable for individuals to assume that notice of withdrawal should also be filed with the same authority. *See* Elec. Code §§ 181.032, 182.0041. The staff of the Secretary of State's office has agreed that this was a proper method to withdraw an application filed under chapter 181 or 182 of the Election Code. We conclude, therefore, that an individual who notified the party chair by February 12 of his or her intent to withdraw an application for consideration for nomination at a party convention was not required to file a personal financial disclosure statement under chapter 572 of the Government Code.

### SUMMARY

An individual who files an application to be considered for nomination at a party convention under chapter 181 or 182 of the Election Code is a "partisan candidate" for purposes of section 572.027(a) of the Government Code and is required to file a personal financial disclosure statement by the deadline set out in that section.

An individual who notified the party chair by February 12 of his or her intent to withdraw an application for consideration for nomination at a party convention was not required to file a personal financial disclosure statement under chapter 572 of the Government Code.

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<sup>1</sup> We assume these individuals intended to eventually withdraw their applications and thereby allow others to apply for consideration for nomination at the party convention. Section 181.033 of the Election Code allows a political party that nominates by convention to extend, by rule, the filing deadline for applicants for an office for which a candidate who has made an application withdraws, dies, or is declared ineligible.