



# TEXAS ETHICS COMMISSION



## ETHICS ADVISORY OPINION NO. 411

*February 12, 1999*

*Whether a political committee may issue checks to members of the legislature to replace checks that were given to members before the beginning of the moratorium provided for in Election Code section 253.034(a). The checks had been written on a closed account. (AOR-454)*

A political committee has asked the Texas Ethics Commission whether it may issue checks to members of the legislature to replace checks that were given to the members before December 13, 1998, but which were written on a closed account. This question has arisen because of Election Code section 253.034(a), which imposes a moratorium on political contributions to members of the legislature during a period that begins 30 days before a regular legislative session and continues through the last day of the session. The current moratorium period began on December 13, 1998, and will last through May 31, 1999, the last day of the current regular legislative session.

The moratorium provision prohibits members of the legislature both from accepting and from *receiving* political contributions during the moratorium:

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 moratorium] period.

Elec. Code § 253.034(b). The prohibition against both acceptance and receipt of a contribution is important because it makes clear that during the moratorium a member of the legislature may not take receipt of a contribution even if the contribution was pledged and the pledge was accepted before the moratorium.<sup>1</sup>

In the situation at issue here, the political committee delivered invalid checks to various members of the legislature before the moratorium began. Although delivery of the invalid checks may have constituted pledges to the legislators, receipt of the pledged contributions did not take place because there were no funds in the account on which the checks were drawn. Under Election Code section 253.034, therefore, a member of the legislature may not take possession of a replacement check during the moratorium because that would amount to the receipt of a contribution at a time when such receipt is prohibited.

### SUMMARY

A member of the legislature may not take receipt of a check during the moratorium period set out in Election Code section 253.034(a) in a situation in which the check is intended to replace an invalid check that was delivered before the moratorium began.

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<sup>1</sup> For purpose of section 253.034 and other provisions of the campaign finance law, the term "contribution" includes a promise to make a transfer. Elec Code § 251.001(2). A contribution in the form of an unfulfilled promise is reported as a pledge on Schedule B of the Ethics Commission's campaign finance reporting forms.