



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 549

March 22, 2019

ISSUE

Whether the secretary of state is a statewide officeholder for purposes of Title 15 of the Election Code. (SP-16)

SUMMARY

The secretary of state is not a “statewide officeholder” or “holder of a statewide office” for purposes of Title 15 of the Election Code (“Title 15”).¹

ANALYSIS

The Texas Ethics Commission (“Commission”), on its own initiative, issues this advisory opinion in response to inquiries concerning whether the secretary of state is a “statewide officeholder” or “holder of a statewide office” for purposes of Title 15. Title 15 contains certain restrictions and reporting requirements that apply to a “statewide officeholder” or “holder of a statewide office in the executive branch.”²

We note that section 251.002 of the Election Code states, “[t]he 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.” Elec. Code § 251.002(a). Thus, the secretary of state is an officeholder and is thereby

¹ Title 15 consists of chapters 251 to 258 in the Election Code.

² See Elec. Code §§ 253.034 (prohibiting a statewide officeholder from accepting political contributions beginning on the 30th day before, and through the end of, a regular legislative session); 253.042 (limiting the amount a statewide officeholder may spend from political contributions to reimburse the officeholder for political expenditures made from personal funds); 254.0391 (requiring a statewide officeholder who accepts a political contribution during a special legislative session to file a separate report to disclose the contribution); 254.0612 and 254.0912 (requiring a holder of a statewide office in the executive branch to disclose additional information regarding political contributions from a person that in the aggregate total \$500 or more).

subjected to the same provisions that apply generally to officeholders under Title 15.³ However, the restrictions that we address in this opinion are those specifically applicable to a “statewide officeholder.”

The secretary of state is an office with statewide jurisdiction to exercise certain constitutional and statutory powers.⁴ However, the Election Code defines the term “statewide office,” as it appears in the Election Code, as “an office of the federal or state government that is voted on statewide.” Elec. Code § 1.005(19). We previously applied that definition to hold that, for purposes of section 253.034 of the Election Code, a member of the State Board of Education is not a “statewide officeholder” because such a member is elected from a multi-county district, not statewide. Ethics Advisory Opinion No. 234 (1994). We similarly apply that definition in this opinion to determine whether the secretary of state is a statewide officeholder or holder of a statewide office in the executive branch for purposes of Title 15.⁵

The Texas Constitution provides that the secretary of state shall be appointed by the Governor and is not elected by the qualified voters of the state. Tex. Const. art. IV, §§ 2, 21. We therefore conclude that the secretary of state is not a statewide officeholder or a holder of a statewide office in the executive branch for purposes of Title 15.

³ The provisions applicable to an officeholder include, for example, the prohibition on converting political contributions to personal use (section 253.035, Election Code) and the requirement to file semiannual campaign finance reports (section 254.093, Election Code). We do not address those provisions in this opinion.

⁴ *See, e.g.*, Tex. Const. art. IV, §§ 3, 21; ch. 405, Gov’t Code; Elec. Code § 31.001 (secretary of state is the chief election officer of the state).

⁵ Words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly. Gov’t. Code § 311.011(b).