



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 585

February 16, 2023

ISSUE

Whether Section 253.007 of the Election Code prohibits a former member of the Legislature from engaging in activity that would require registration under Chapter 305 if the former member contributed money from his political funds to a general-purpose political committee more than two years before being required to register.

Whether certain political contributions or expenditures made under Section 253.006(3) of the Election Code constitute a violation of Section 253.004 of the Election Code. (AOR 674.)

SUMMARY

The requestor may make political contributions and direct campaign expenditures from a general-purpose committee he controls without violating Sections 253.004, 253.006 and 253.007, provided he waits two years from the last contribution accepted by the political committee accepted from his candidate or officeholder account.

FACTS

The requestor is a former legislator who asks how Sections 253.006 and 253.007 of the Election Code apply to him after transferring political contributions he accepted as a candidate and officeholder from his candidate/officeholder (C/OH) account to a general-purpose committee (the GPAC). The requestor does not explicitly state he will control the GPAC. However, such control is implied by his statement that once registered as a lobbyist he “intends to *authorize* political contributions and expenditures from the GPAC.”

ANALYSIS

In 2019, the 86th Legislature passed H.B. 2677 seeking to “clarify that a registered lobbyist may not use political contributions to advance his or her lobby efforts.”¹ H.B. 2677 included Sections

¹ *Author's/Sponsors Statement of Intent*, H.B. 2677, available at <https://capitol.texas.gov/tlodocs/86R/analysis/pdf/HB02677E.pdf#navpanes=0>

253.006 and 253.007 of the Election Code which limit a former candidate or officeholder's ability to use their own political contributions to facilitate their lobbying career.²

Section 253.007 imposes a two-year waiting period before a former candidate or officeholder may engage in activity requiring registration as a lobbyist under Chapter 305 of the Government Code from the last time the former candidate or officeholder made a political contribution or direct campaign expenditure from a political contribution the former candidate or officeholder "accepted . . . as a candidate of officeholder."³

In Ethics Advisory Opinion No. 575, we addressed whether a former candidate or officeholder could transfer their contributions to a political committee they controlled to avoid triggering the Section 253.007 restrictions on the lobbying activity. Tex. Ethics Comm'n. Op. No. 575 (2022). We held that "candidates and officeholders cannot avoid the restrictions of section 253.007 by transferring the political contributions they accepted as a candidate or officeholder to political committees they control." *Id.* This is because "even after being transferred to a committee" those funds were still "accepted by the person as a candidate or officeholder" due to the transferor's continued control over the funds. *Id.* (citing Tex. Elec. Code § 253.007).

A "transfer" or a "contribution" from a former officeholder to a political committee controlled by the former officeholder candidate is a legal fiction akin to person moving money from their right pants pocket to left. To effect the transfer, a former candidate or officeholder needs to do little more than file a GPAC registration form and report the "transfer" as an expenditure on the Candidate/Officeholder campaign finance report and a contributions on their political committee campaign finance report. There are almost no organizational requirements for a political

² Because the statutes are codified in Chapter 253 of the Election Code, it is also a violation of Section 253.004 for a person to knowingly violate Section 253.006 or 253.007. Tex. Elec. Code § 253.004(a) ("A person may not knowingly make or authorize a political expenditure in violation of [Chapter 253].")

³ The law reads in full:

Sec. 253.007. PROHIBITION ON LOBBYING BY PERSON MAKING OR AUTHORIZING CERTAIN POLITICAL CONTRIBUTIONS AND DIRECT CAMPAIGN EXPENDITURES.

(a) In this section, "administrative action," "communicates directly with," "legislation," "member of the executive branch," and "member of the legislative branch" have the meanings assigned by Section 305.002, Government Code.

(b) Notwithstanding any other provision of law and except as provided by Subsection (c), a person who knowingly makes or authorizes a political contribution or political expenditure that is a political contribution to another candidate, officeholder, or political committee, or direct campaign expenditure, from political contributions accepted by the person as a candidate or officeholder may not engage in any activities that require the person to register under Chapter 305, Government Code, during the two-year period after the date the person makes or authorizes the political contribution or direct campaign expenditure.

(c) Subsection (b) does not apply to a person who:

(1) communicates directly with a member of the legislative or executive branch only to influence legislation or administrative action on behalf of:

(A) a nonprofit organization exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, as an organization described by Section 501(c)(3) of that code;

(B) a group of low-income individuals; or

(C) a group of individuals with disabilities; and

(2) does not receive compensation other than reimbursement for actual expenses for engaging in communication described by Subdivision (1).

committee. The lack of statutory controls on the internal governance of a political committee allows a former candidate or officeholder to continue to exercise complete control over their previous candidate/officeholder funds they re-label as political committee funds. We opined that sanctioning such easy circumvention “would strip section 253.007 of any meaning” and that “state law demands that we presume the Legislature intended to enact an effective statute.” Tex. Ethics Adv. Op. No. 575 (2022) (citing Tex. Gov’t Code § 311.021(2)).

The requestor asks the Commission to reconsider Ethics Advisory Opinion No. 575. He points to section 253.006, the plain language of which indicates that the Legislature did intend to allow a former candidate or officeholder to engage in lobby activity and continue to make a political contributions and direct campaign expenditures from a political committee the former candidate or officeholder controlled. In the requestor’s view, the former candidate or officeholder would simply need to wait two years after making the transfer of his campaign funds to a GPAC before engaging in lobby activity. After the two-year wait, the former candidate or officeholder would be free to make political contributions from the political committee account and continue to engage in lobby activity.

Section 253.006 states:

Notwithstanding any other provision of law, a person required to register under Chapter 305, Government Code, may not knowingly make or authorize a political contribution or political expenditure that is a political contribution to another candidate, officeholder, or political committee, or direct campaign expenditure, from political contributions accepted by:

- (1) the person as a candidate or officeholder;
- (2) a specific-purpose committee for the purpose of supporting the person as a candidate or assisting the person as an officeholder; or
- (3) a political committee that accepted a political contribution from a source described by Subdivision (1) or (2) during the two-year period immediately before the date the political contribution or expenditure was made.

Subdivision (3) appears to authorize a former candidate or officeholder to be a registered lobbyist and make political contributions from a political committee he controls two years after transferring his candidate/officeholder political contributions to the committee. Tex. Gov’t Code § 253.006(3). Subdivision (3) must contemplate that the former candidate or officeholder controls the political committee because the law only applies to expenditures knowingly made or authorized by the former candidate or officeholder. *Id.* The former candidate or officeholder necessarily controls the committee to “make or authorize” an expenditure for the committee. Subdivision (3) then authorizes the former candidate or officeholder to make contributions and direct campaign expenditures from such a political committee two years after the political committee accepted contributions from the former candidate of officeholder’s own political contributions or political contributions from the registrant’s specific-purpose committee. *Id.*

The requestor argues a contrary interpretation would nullify subdivision (3) and “create a conflict between two contemporaneously adopted statutory provisions: permissible activity under § 253.006 triggers a violation of § 253.007.”

The argument follows that under a plain and ordinary reading of HB 2677, a person can leave office and contribute money to a GPAC, do nothing with the GPAC for two years, make no political contributions or lobby expenditures during the same time period, and then register as a lobbyist. At which time, political expenditures from COH and SPAC accounts would still be prohibited, but the making of the same from GPAC accounts would be permissible under Section 253.006(3) of the Election Code and Section 305.029(b) of the Government Code, which effectively restates Section 253.006 in the Government Code.

When construing a statute, the Texas Supreme Court counsels that “we begin with its language, drawing the Legislature's intent from the words chosen when possible.” *Phillips v. Bramlett*, 288 S.W.3d 876, 880 (Tex. 2009) (citing *State v. Shumake*, 199 S.W.3d 279, 284 (Tex. 2006)). Legislative intent is determined “from the entire act and not just its isolated portions.” *City of San Antonio v. City of Boerne*, 111 S.W.3d 22, 25 (Tex. 2003). One must “try to give effect to all the words of a statute, treating none of its language as surplusage when reasonably possible.” *Id.* (quoting *Sultan v. Mathew*, 178 S.W.3d 747, 751 (Tex. 2005)).

Considering Section 253.007 in light of 253.006 compels the conclusion that the Legislature intended to permit a former candidate or officeholder to transfer their political contributions to a political committee, wait two years, register as a lobbyist and use the new political committee to make political contributions and direct campaign expenditures.

Both Section 253.007 and 253.006 tie a restriction to the use of political contributions “accepted by the person as a candidate or officeholder.” Compare Tex. Elec. Code § 253.006(1) with *id.* § 253.007(b). However, Section 253.006 treats a political contribution transferred to a political committee by a former candidate or officeholder in subdivision (3) differently than a contribution “accepted by the person as a candidate or officeholder” in subdivision (1). Section 253.006(3) clearly contemplates a former candidate or officeholder transferring his own contributions to a political committee he controls and then being able to use those contributions to make political contributions regardless of whether he is lobbyist (provided he waits two years). It impossible to give effect to that provision and hold that a similar contribution would from a candidate-controlled political committee would violate Section 253.006(1) and trigger the 253.007 waiting period.

Therefore, the requestor may make political contributions and direct campaign expenditures from a general-purpose committee he controls without violating Sections 253.004, 253.006 and 253.007, provided he waits two years from the last contribution the political committee accepts from his C/OH account.

Our job is to give effect to the Legislature’s intent drawing from the words it chose. *Bramlett*, 288 S.W.3d at 880. In this case, it is now clear the Legislature chose to allow an easy route for a former candidate or officeholder to convert a lifetime prohibition on using their political contributions to make political contributions as a lobbyist to a two-

year wait. All an officeholder-turned lobbyist needs to do is transfer their candidate officeholder contributions to a general-purpose committee they control.