



# TEXAS ETHICS COMMISSION



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## ETHICS ADVISORY OPINION NO. 587

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*February 16, 2023*

Having determined that it would be in the public interest, the Texas Ethics Commission issues the following opinion on its own initiative pursuant to Section 571.094, Government Code.

### ISSUES

*A member of the Texas Legislature retires at the end of a legislative session. Before the next legislative session, the former legislator: (1) uses title 15 campaign contributions to make a political contribution to legislative candidates; (2) subsequently uses personal funds to reimburse the campaign for the same amount of the contributions; and (3) registers to lobby. May the former legislator lobby members of the Legislature during the two-year period after making the political contribution?*

*May the former legislator cure a violation of Section 253.007 or reduce the two-year waiting period imposed by Section 253.007 by reimbursing his or her campaign with personal funds in an amount that equals the political contributions made?*

*Pursuant to Section 571.173, Government Code, the commission may impose a civil penalty of not more than \$5,000 or triple the amount at issue for a violation of law administered and enforced by the commission. What does "the amount at issue" mean for purposes of imposing a penalty for a violation of Section 253.007, Election Code? Does it mean: (1) the amount of political contributions at issue, (2) the maximum amount of income indicated on the person's lobby registration statement, or (3) something else? (AOR 679-CI)*

### SUMMARY

Section 253.007, Election Code prohibits a person from engaging in activities that require the person to register under Chapter 305, Government Code during the two-year period after the date the person knowingly makes or authorizes a political contribution to another candidate, officeholder, or political committee from political contributions accepted by the person as a candidate or officeholder.

The plain language of Section 253.007 does not permit a person to cure a past violation or reduce the two-year waiting period by reimbursing the person's campaign with personal funds.

The “amount at issue” for purposes of Section 253.007 is reserved by the Commission.

## FACTS

The Commission assumes the following facts for purposes of this opinion. A former member of the Texas Legislature retires at the end of a legislative session. Before the next legislative session, the former legislator: (1) uses title 15 campaign contributions to make a political contribution to legislative candidates; (2) subsequently uses personal funds to reimburse the campaign for the same amount of the contribution; and (3) engaged in activity that required registration under Chapter 305.

## ANALYSIS

### **Section 253.007 prohibits a former member of the Legislature from engaging in activities that require registration as a lobbyist for two years after using title 15 funds to make political contributions to legislative candidates.**

The Legislature enacted Section 253.007, Election Code in response to concerns “about the revolving door of candidates and officeholders becoming lobbyists immediately after losing an election or retiring from office.”<sup>1</sup> Among other things, Section 253.007 prohibits a person from engaging in activities that require the person to register under Chapter 305, Government Code during the two-year period after the date the person knowingly makes a political contribution to a candidate, officeholder, or political committee from political contributions accepted by the person as a candidate or officeholder. Tex. Elec. Code § 253.007(b).

Chapter 305 requires a person to register as a lobbyist if he or she receives—or is entitled to receive under an agreement—an amount of compensation that exceeds an annually-adjusted threshold to communicate directly with a member of the legislative or executive branch for the purpose of influencing legislation or administrative action. Beginning on January 1, 2023, that threshold is \$1,760 in a calendar quarter. Tex. Gov’t Code § 305.003(a)(2); 1 Tex. Admin. Code § 18.31; *see also* Tex. Gov’t Code § 305.001(3) (defining compensation as “money, service, facility, or other thing of value or financial benefit that is received or is to be received in return for or in connection with services rendered or to be rendered”).

Section 253.007 thus prohibits a former member of the Legislature from receiving—or being entitled to receive under an agreement—over \$1,760 in a calendar quarter to lobby current members of the Legislature if the former member has used political contributions he or she accepted as a candidate or officeholder to make political contributions to others within the past two years.

### **Section 253.007 does not permit a person to cure a past violation or reduce the two-year waiting period by reimbursing his or her campaign with personal funds.**

Some laws under the Commission’s jurisdiction expressly allow for past violations to be cured or remedied by subsequent action. For example, a statement, registration, or report required to be filed with the Commission is not considered to be late if the person files a corrected report within

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<sup>1</sup> <https://capitol.texas.gov/tlodocs/86R/analysis/pdf/HB02677H.pdf#navpanes=0>

14 business days and any error or omission in the report as originally filed was made in good faith. Tex. Gov't Code § 571.0771.

However, many other violations cannot be cured. For example, the return of an illegal corporate contribution after knowing acceptance does not undo the violation. *See, e.g., In re Fernandez*, SC-3120241 (2012) (finding a violation of the corporate contribution prohibition even after the respondent returned the illegal contribution).<sup>2</sup>

Here, the plain language of Section 253.007 does not permit a reimbursement from personal funds to a campaign to change the source of funds used in the initial contribution. The two-year waiting period is triggered once a former candidate or officeholder “makes or authorizes a political contribution or political expenditure that is a political contribution” from his own political contributions. A “contribution” is a “direct or indirect transfer of money, goods, services, or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a transfer.” Tex. Elec. Code § 251.001(2). Therefore, the triggering event is complete once the former officeholder effects the transfer of his own political contributions to another candidate, officeholder or political committee.

Notwithstanding the conclusion that a reimbursement does not cure a past violation of Section 253.007, it may be relevant for the Commission’s consideration of the appropriate penalty for the violation. By law, the Commission is required to consider several factors in assessing a penalty, including “actions taken to rectify the consequences of the violation.” Tex. Gov’t Code § 571.177.

**The “amount at issue” for purposes of Section 253.007 is reserved by the Commission.**

Pursuant to Section 571.173, Government Code, the Commission may impose a civil penalty of not more than \$5,000 or triple the amount at issue for a violation of law administered and enforced by the commission. However, that leaves unanswered what “the amount at issue” means for purposes of imposing a penalty for a violation of Section 253.007.

This is a question of first impression for the Commission. Some may argue that the amount at issue is the amount of political contributions made by the former legislator from his or her title 15 funds within two years of engaging in activities that require registration. But Section 253.007 does not prohibit making political contributions. Rather, it prohibits a person who has made certain contributions from engaging “in any activities that require the person to register” for two years. Therefore, the amount at issue may be the total amount of lobby activity prohibited by Section 253.007 (*i.e.*, the amount of lobby compensation and expenditures).

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<sup>2</sup> Available at [https://www.ethics.state.tx.us/data/enforcement/sworn\\_complaints/2012/3120241.pdf](https://www.ethics.state.tx.us/data/enforcement/sworn_complaints/2012/3120241.pdf)