



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 592

September 27, 2023

ISSUE

Whether Section 253.007 of the Election Code prohibits a former legislator from engaging in activity requiring lobby registration under various scenarios. (*AOR-688*).

SUMMARY

Section 253.007 applies to contributions to all candidates for and holders of non-federal Texas elective offices—not just legislative or state executive branch offices. Once a triggering contribution is made, it cannot be cured by a refund or reimbursement. Section 253.007 also applies to a political contribution made to a political committee regardless of how the political committee ultimately disposes of the contribution.

FACTS

The requestor is a former legislator who made several political contributions in 2022 from a specific-purpose committee that he controlled. The requestor used his specific-purpose political committee to make political contributions to two local candidates, one statewide executive branch candidate, general-purpose political committees and a county executive committee of a political party. The requestor sought and received reimbursements of his SPAC's political contributions from two local candidates and the statewide candidate. The requestor states he reimbursed his specific-purpose political committee with personal funds for some of the contributions for which he did not receive a refund.

The request states that despite not being required to the register as a lobbyist under Chapter 305 of the Government Code, the requestor nevertheless registered as a lobbyist “out of an abundance of caution.”

ANALYSIS

Section 253.007 of the Election Code prohibits a person from engaging in activities that require the person to register as a lobbyist under Chapter 305 of the 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).

The Section 253.007 waiting period also applies to expenditures made by a candidate-controlled specific-purpose committee. Tex. Ethics Comm’n Op. No. 575 (2002).

The requestor asks a series of questions regarding the scope of Section 253.007 and whether triggering contributions can be refunded to shorten the two-year waiting period. Each question is addressed specifically below after a discussion of the general contours of the law.

Section 253.007 applies to contributions to all candidates for and holders of non-federal Texas elective offices—not just legislative or state executive branch offices.

Section 253.007 applies, in relevant part, to certain contributions made to a “candidate, officeholder, or political committee.” The Election Code definition of a “candidate” applies to all elective public offices in the state, excluding federal office. Tex. Elec. Code §§ 251.001(1) (defining candidate) 252.005; 251.006 (generally excluding federal offices from Title 15 regulation). The plain language of Section 253.007 does not limit its reach to contributions made to legislative or state executive branch officer holders or candidates. Nor does it limit its reach to only political committees that make contributions to legislative or state executive branch officeholders or candidates.

Once a triggering contribution is made, it cannot be cured by a refund or reimbursement.

Earlier this year we were asked whether a candidate or officeholder could personally reimburse their campaign account to “cure” a past violation or to shorten the two-year waiting period. Tex. Ethics Comm’n Op. No. 587 (2023) (“EAO No. 587”). We held that Section 253.007 did not provide for exceptions to “cure” a past violation or shorten the two-year waiting period after a triggering contribution was made. *Id.* The same is true of a refund of a triggering 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 political contributions accepted by the candidate or officeholder. Tex. Elec. Code § 253.007. The triggering event is complete once the former officeholder effects the transfer of political contributions to another candidate, officeholder or political committee. See EAO 587. Nothing in the Election Code provides a way to reverse the expenditure to end the two-year waiting period.

With the basic framework of Section 253.007 established, we turn to the requestor’s specific questions.

Question 1: Is a former legislator prohibited from engaging in activity requiring registration before *the legislative branch* if a specific-purpose committee supporting that person made, during the preceding two years, contributions from political funds to a constable candidate, a justice court candidate, and a candidate for land commissioner?

Yes. The two-year waiting period is triggered by a contribution made to a candidate or officeholder regardless of the level of office sought (excluding federal office) when the contribution is made from a former candidate or officeholder’s political contributions. Tex. Elec.

Code § 253.007; see also Tex. Ethics Comm'n Op. No. 575 (2002) (applying § 253.007 to candidate-controlled specific-purpose political action committees).

Question 2: Does the answer to Question 1 change if the specific-purpose committee was reimbursed with the lawmaker's personal funds *and* each candidate refunded the contributions to the committee?

No. The plain language of Section 253.007 provides no exception or way to shorten the waiting period once a triggering contribution is made.

Question 3: Is a former legislator prohibited from engaging in activity requiring registration if a specific-purpose committee supporting that person made, during the preceding two years, contributions from political funds to a general-purpose committee that is not controlled by the former legislator?

Yes. The plain language of 253.007 applies to contributions made to "a political committee." A general-purpose political committee is included in the definition of "political committee." Tex. Elec. Code § 251.001(12), (14).

Question 4: Is a former legislator prohibited from engaging in activity requiring registration if a specific-purpose committee supporting that person made, during the preceding two years, contributions from political funds to a political party's county executive committee?

Yes, if the county executive committee meets the definition of a political committee. A county executive committee will often meet the definition of a political committee, which is "two or more persons acting in concert with a principal purpose of accepting political contributions or making political expenditures." Tex. Elec. Code 251.001(12).

The treatment of county executive committees of a political party as a type of general-purpose political committee is apparent throughout Title 15. *See id.* §§ 253.031(d) (applying a higher political committee registration threshold to "a political party's county executive committee that accepts political contributions or makes political expenditures"); 254.161 (applying notice requirements to "a general-purpose committee other than the principal political committee of a political party or a political committee established by a political party's county executive committee"); 257.001 ("The state or county executive committee of a political party may designate a general-purpose committee as the principal political committee for that party in the state or county, as applicable.").

Question 5: Is a former legislator prohibited from engaging in activity that requires registration if a specific-purpose committee supporting that person made, during the preceding two years, a contribution from political funds to a political committee that never supported/opposed a candidate before dissolving?

Yes. The two-year waiting period is triggered by the candidate-controlled specific-purpose committee making a contribution to a political committee from contributions accepted by the

candidate-controlled specific-purpose committee. Tex. Elec. Code § 253.007; *see* also EAO No. 587. The law provides no exception if the recipient committee dissolves before making use of the triggering contribution.

Question 6: Does Election Code § 253.007 apply to a person that voluntarily registered as a lobbyist despite not engaging in activity requiring registration (by remaining below the 40-hour threshold)?

Section 253.007 prevents a person from “engag[ing] in any activit[y]” that would require registration as a lobbyist—not the act of registering. Whether a person engaged in activity that requires registration is a fact question that cannot be resolved in an advisory opinion. Assuming the person actually did not engage in activity requiring registration as a lobbyist, the person would not violate 253.007 by gratuitously registering as a lobbyist.