

BILL ANALYSIS

Senate Research Center

S.B. 2085
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State Affairs
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, the Texas Election Code provides that an officer or employee of a political subdivision may not spend or authorize the expenditure of public funds for political advertising. However, this prohibition does not apply to a communication which factually describes the purpose of a measure if it does not advocate defeat or passage of the measure.

A recent Texas Ethics Commission (TEC) decision imposed a \$1,000 civil penalty upon city administrators who had hired a consulting firm to develop a public education program with regard of several bond propositions on the ballot. TEC determined that statements such as "make needed street improvements" constituted political advertising in violation of the statute.

Such narrow allowances to communicate with voters creates uncertainty in how to appropriately bring awareness of an issue before the voters without it being deemed "advocacy," and voters are accorded little benefit because they remain ill-informed about the advantages or disadvantages of a particular measure.

S.B. 2085 amends current law relating to the expenditure of funds for political advertising by a political subdivision.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 255.003, Election Code, by amending Subsection (a) and adding Subsections (d), (e), and (f), as follows:

- (a) Prohibits an officer or employee of a political subdivision from knowingly spending or authorizing the spending of public funds for political advertising.
- (d) Provides that it is an affirmative defense to prosecution for an offense under this section or the imposition of a civil penalty for conduct under this section that an officer or employee of a political subdivision reasonably relied on a court order or an interpretation of this section in a written opinion issued by a court of record, the attorney general, or the Texas Ethics Commission (TEC).
- (e) Requires TEC, on written request of the governing body of a political subdivision that has ordered an election on a measure, to prepare an advance written advisory opinion as to whether a particular communication relating to the measure does or does not comply with this section.
- (f) Provides that Subsections (d) and (e) do not apply to a port authority or navigation district.

SECTION 2. Provides that Section 255.003, Election Code, as amended by this Act, applies to the prosecution of conduct committed before, on, or after September 1, 2009, as to which judgment has not been entered or a sentence has not been imposed, or if judgment has been entered and a sentence imposed, an appeal is pending or the time for appeal has not expired.

SECTION 3. Effective date: September 1, 2009.