

BILL ANALYSIS

Senate Research Center
81R10995 ESH-F

S.B. 2085
By: Davis, Wendy
State Affairs
4/29/2009
As Filed

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 spending 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 to 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 to 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.

This bill seeks to create a safe harbor with respect to political communications by excluding communications which factually describe the purposes of a measure, including describing its advantages and disadvantages, from the definition of political advertising, so long as the communication does not expressly advocate the defeat or passage of the measure. Additionally, the bill provides protection for officers or employees of a political subdivision who rely on a third party whose actions are found to have violated the statute, if the officer/employee had no prior knowledge of the intent to violate the statute. Further, the bill provides an affirmative defense for those officers/employees who reasonably relied on a court order or similar written opinion when prosecuted for an alleged offense. The bill ensures that another prosecution or appeal cannot be brought before TEC during the pendency of a complaint currently before TEC, if it arises out of the same conduct. Finally, the bill provides that TEC, on written request of a governing body, is to prepare an advance written advisory opinion on whether a particular communication constitutes prohibited political advertising, to ensure a political subdivision's compliance with the law before communicating with the voters.

As proposed, 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 Subsections (a) and (b), and adding Subsections (d)-(g), 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.
- (b) Provides that this section does not apply to a communication that factually describes the purposes of a measure, including a description of the advantages or disadvantages of

the measure, if the communication does not expressly advocate passage or defeat of the measure.

(d) Provides that an officer or employee of a political subdivision does not violate this section if the officer or employee employs, hires, or votes to hire a person whose conduct is found to violate this section if the officer or employee did not have prior knowledge of the person's intent to violate this section.

(e) 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, the Texas Ethics Commission (TEC), or an attorney employed or retained by the political subdivision.

(f) Prohibits prosecution for an offense under this section from being brought during the pendency of a complaint before TEC, or of an appeal from TEC's finding of a violation, that arises out of the same conduct. Provides that the imposition by TEC of a civil penalty for conduct that violates this section bars prosecution for that conduct.

(g) 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.

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.