

BILL ANALYSIS

H.B. 2253
By: Hancock
Elections
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Current law prohibits an officer or employee of a political subdivision from spending or authorizing the spending of public funds for political advertising. Factual information in the form of television advertising, pamphlets, fliers, or any other form of written communication is allowed if the material is only factual and does not advocate for the passage or the defeat of a measure.

In 2000, Haltom City's mayor pro tem and city council approved the hiring of a consulting firm to develop a public education program in correlation with a bond election. After the development of brochures, fliers, and running television power point, the city manager, alone, gave the approval for the final product without a city council review or authorization. In response to receiving one of these fliers in a water bill, a resident filed a complaint with the Texas Ethics Commission against the entire city council claiming the material positively promoted the adoption of the bond measure. The city council members claimed they did not have any say in the final draft of the material and, therefore, did not have anything to do with the promotion of the bond election. Because the mayor pro tem and city council members voted to hire the consulting firm and the firm was paid for the material it produced, the commission ruled that public funds were spent or authorized to be spent for the production of the pro-bond material. The commission found the members of the council and mayor pro tem guilty and charged them with a civil penalty. As the law stands, the mayor pro tem and city council members can still be charged with a criminal penalty for the violation.

H.B. 2253 specifies that an officer or employee of a political subdivision may not knowingly authorize the spending of public funds for political advertising. The bill provides that a member of a governing body of a political subdivision may not be found to be in violation of this provision if the member's only action is the approval of the spending of funds for a proposed communication that did not at that time advocate for or against a measure and the content is later changed such that the measure is considered political advertising. The bill requires the commission to define "advocate" for the purpose of this provision. The bill establishes that the imposition of a civil penalty for a violation of this provision bars further prosecution for that conduct.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Ethics Commission in SECTION 1 of this bill.

ANALYSIS

H.B. 2253 amends the Election Code to specify that a prohibition against an officer or employee of a political subdivision spending or authorizing the spending of public funds for political advertising applies to an officer or employee who knowingly performs such an action. The bill specifies that a member of the governing body of a political subdivision whose only action in connection with a proposed communication describing the purpose of a measure is to approve

the spending of public funds for the communication does not violate the prohibition if, at the time of the approval, the proposed content of the communication did not advocate passage or defeat of the measure and the content of the communication is later changed such that the measure is political advertising. The bill establishes that an officer or employee of a political subdivision may not be found to be in violation of the prohibition based solely on the conduct of another person. The bill makes it an affirmative defense to prosecution under these provisions or the imposition of a civil penalty for conduct under these provisions that an officer or employee reasonably relied on a court order for an interpretation of these provisions in a written opinion issued by a court of record, the attorney general, the Texas Ethics Commission, or an attorney employed or retained by the political subdivision. The bill provides that the imposition by the commission of a civil penalty for a violation of the prohibition bars prosecution for that conduct. The bill prohibits a sworn complaint alleging a violation of the prohibition from proceeding beyond a preliminary review hearing unless the commission makes a preliminary finding that the complaint is not frivolous and states in writing the basis for the commission's finding. The bill requires the commission to adopt rules that define "advocate" for purposes of this provision.

EFFECTIVE DATE

September 1, 2009.