

BILL ANALYSIS

S.B. 2085
By: Davis, Wendy
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. 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 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. The commission determined that statements such as "make needed street improvements" constituted political advertising in violation of current law.

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.

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

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

S.B. 2085 amends the Election Code to specify that the prohibition against an officer or employee of a political subdivision spending or authorizing the spending of public funds for political advertising applies to such an action that is performed knowingly. The bill makes it an affirmative defense to prosecution for such an offense or the imposition of a civil penalty for the unlawful use of public funds for political advertising that an officer or employee of a political subdivision reasonably relied on a court order or an interpretation of this provision in a written opinion issued by a court of record, the attorney general, or the Texas Ethics Commission. The bill requires the commission, 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 provision. The bill establishes that the provisions providing an affirmative defense to prosecution and requiring an advance written advisory opinion by the commission do not apply to a port authority or navigation district. The bill makes its provisions applicable 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.

EFFECTIVE DATE

September 1, 2009.