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OPINION COMMITTEE



House of Representatives
Committee on Elections

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Opinion Committee
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I.D. # 42766

RQ-0599-JC

Dear General Cornyn:

Pursuant to Tex. Government Code 402.042(b)(7), I am writing to request an Attorney General's opinion regarding whether the Texas Ethics Commission's legal interpretation is correct that the agency's statutory confidentiality provision precludes its staff from ever interviewing any third-party witnesses.

The Texas Ethics Commission (TEC) is charged with enforcing the campaign finance laws of the State of Texas as well as investigating complaints. Texas Government Code § 571.061. Individuals may file sworn complaints regarding violations of Title 15 with the TEC, and during the agency's preliminary review of complaints, it "shall determine whether there is credible evidence that provides cause for the commission to conclude that a violation within the jurisdiction of the commission has occurred." Tex. Gov. Code § §571.122, 571.125. A thorough investigation of at least some campaign finance complaints would appear to require interviewing 3rd party witnesses (such as a candidate's campaign treasurer, a campaign worker, a political consultant, or a vendor to the campaign). The TEC, however, does not interview any 3rd party witnesses because of the agency's legal interpretation that interviewing such witnesses would necessarily violate the agency's confidentiality statute.

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The TEC's confidentiality provision provides that "... proceedings at a preliminary review or informal hearing performed by the commission, a sworn complaint, and documents and any additional evidence relating to the processing, preliminary review, informal hearing, or resolution of a sworn complaint or motion are confidential and may not be disclosed..." Tex. Gov. Code 571.140 (a). Agency staff and other persons that violate this confidentiality provision are subject to a Class A misdemeanor as well as civil liability to the respondent (the greater of \$10,000 or the amount of actual damages, plus attorney fees). Tex. Gov. Code 571.140 (c),(d). The agency maintains that interviewing any 3rd party witnesses would necessarily disclose at least some information about the sworn complaint and subject its staff to criminal and civil liability. Critics of the agency's interpretation contend that the agency, like other state agencies, can fulfill its duty to investigate and interview 3rd party witnesses without necessarily breaching the confidentiality of a complaint. The TEC staff, critics maintain, can uphold the confidentiality of complaints and investigate thoroughly by asking witnesses appropriate questions that do not tell the witnesses the parties to the complaint or the nature of the complaint. Critics further say that whatever minor amount of information, if any, as to the nature of the complaint that witnesses may be able to indirectly surmise from the interview questions, does not constitute a breach of confidentiality under Section 571.140. Lastly, critics note that the agency's interpretation is contrary to those of other state agencies that have similar confidentiality provisions but interpret them as not precluding their staffs from interviewing witnesses. See, e.g., Tex. Bus. Comm. Code secs. 15.10(i), 17.61(f); Tex Ins. Code art 1.10D, Sec. 5; Tex. Rev. Civ. Stat. 581-28; and Tex Gov Code arts. 33.032, 81.033.

In conclusion, my question is whether the TEC currently can investigate third-party witnesses, with careful, appropriate questions, without necessarily violating the confidentiality provision in Section 571.140 of the Government Code. Thank you for your attention to this matter.

Sincerely,

Debra Danburg