



MORGAN MEYER
CHAIR

COMMITTEE ON GENERAL INVESTIGATING
HOUSE OF REPRESENTATIVES

NICOLE COLLIER
VICE CHAIR

December 20, 2019

Members of the Texas House of Representatives
State Capitol
Austin, Texas

Dear Members:

The Committee on General Investigating adopted the attached report of the committee's bipartisan panel of legal experts as the committee's final report concerning the investigation into the facts and circumstances of the June 12, 2019 meeting between Michael Quinn Sullivan, Speaker Dennis Bonnen, and Representative Dustin Burrows.

Pursuant to Section 301.020(d), Government Code, the Committee makes this report to the Members of the House for their information and consideration.

Respectfully submitted,

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Morgan D. Meyer
Chairman

A handwritten signature in black ink, appearing to be "Nicole D. Collier", written over a horizontal line.

Nicole D. Collier
Vice Chair

A handwritten signature in black ink, appearing to be "Matt Krause", written over a horizontal line.

Matt Krause

A handwritten signature in black ink, appearing to be "Candy Noble", written over a horizontal line.

Candy Noble

A handwritten signature in black ink, appearing to be "Leo Pacheco", written over a horizontal line.

Leo Pacheco

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December 6, 2019

Representative Morgan Meyer, Chair
Representative Nicole Collier, Vice-Chair
Representative Matt Krause
Representative Candy Noble
Representative Leo Pacheco
House of Representatives Committee on General Investigating

Dear Mr. Chairman and Members of the Committee:

The General Investigating Committee of the Texas House of Representatives requested the Public Integrity Unit of the Texas Department of Public Safety to investigate matters related to the conversation between Speaker Dennis Bonnen, Representative Dustin Burrows, and Michael Quinn Sullivan recorded by Sullivan on June 12, 2019, and report their findings to the Committee. The General Investigating Committee then appointed this panel of three Texas attorneys, all former elected public officials, to review the results of that investigation and consider whether either Speaker Bonnen or Representative Burrows violated:

- The Texas Penal Code;
- Article XVI, Section 41 of the Texas Constitution;
- Title 15 of the Texas Election Code;
- Chapter 572 of the Texas Government Code;
- Any Rule of the Texas House of Representatives.

This panel was not asked to, and did not, consider what actions, if any, the Committee or the House as a whole might take during the remainder of this legislative term with regard to Speaker Bonnen's and Representative Burrow's actions.

I. Penal Code Violations

A. Bribery

1. Text of statute

Sec. 36.01(3) “Benefit” means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a **direct and substantial interest**.

Sec. 36.02. BRIBERY. (a) A person commits an offense if he intentionally or knowingly offers, confers, or agrees to confer on another, or **solicits**, accepts, or agrees to accept from another:

(1) **any benefit as consideration for the recipient’s decision, opinion, recommendation, vote, or other exercise of discretion as a public servant, party official, or voter;**

....

(4) **any benefit that is a political contribution as defined by Title 15, Election Code, or that is an expenditure made and reported in accordance with Chapter 305, Government Code, if the benefit was offered, conferred, solicited, accepted, or agreed to pursuant to an express agreement to take or withhold a specific exercise of official discretion** if such exercise of official discretion would not have been taken or withheld but for the benefit; notwithstanding any rule of evidence or jury instruction allowing factual inferences in the absence of certain evidence, direct evidence of the express agreement shall be required in any prosecution under this subdivision.

....

(d) It is an exception to the application of Subdivisions (1), (2), and (3) of Subsection (a) that the benefit is a political contribution as defined by Title 15, Election Code, or an expenditure made and reported in accordance with Chapter 305, Government Code.

(e) An offense under this section is a felony of the second degree.

(emphasis added)

2. Analysis

Speaker Bonnen asked or suggested that Mr. Sullivan and the entity he represents, Empower Texans, do the following:

- Refrain from donating to Speaker Bonnen’s own opponent

- Refrain from donating to opponents of Speaker Bonnen’s allies
- Donate to candidates who mount primary challenges to particularly incumbent Representatives whose names were on a “list”
- Donate to Republican candidates running against named Democrats

None of these actions can constitute a violation of the Bribery Statute unless they constitute a “benefit” to Speaker Bonnen as defined by that statute.

a. Are any of Speaker Bonnen’s requests “benefits”?

“Pecuniary gain or pecuniary advantage” has been interpreted by the Tenth Court of Appeals to mean “anything to which a price can be assigned.” *Smith v. State*, 959 S.W.2d 1, 20-21 (Tex. App.—Waco 1997, pet. ref’d).¹ In *Smith*, the court determined that provision of “round trip plane tickets, hotel accommodations, meals, ground transportation, and theater tickets” was a pecuniary benefit under the Bribery Statute. *Id.* at 7, 21. In part, the court reasoned that because section 36.10 exempts items such as lodging and transportation in certain circumstances, the Legislature must have intended that non-monetary gifts such as lodging and transportation would otherwise constitute “benefits.”

Additionally, “[t]he inclusion of ‘anything reasonably regarded’ broadens the definition and allows latitude in its interpretation.” *Valencia v. State*, No. 13-02-020-CR, 2004 WL 1416239, at *3 (Tex. App.—Corpus Christi-Edinburg June 24, 2004, pet. ref’d) (mem. op.) (concluding that “any rational trier of fact could have found beyond a reasonable doubt that appellant’s vote for a salaried county constable position, could be reasonably regarded as a pecuniary gain or advantage and thus constituted a ‘benefit.’”).²

Black’s Law Dictionary, the acknowledged authoritative source for legal lexicology, defines “pecuniary gain” as a “gain of money or of something having monetary value,” *Gain*, *Black’s Law Dictionary* (11th ed. 2019), and “pecuniary advantage” as “[t]he condition of being able to gain or of having more money than another,” *Advantage*, *Black’s Law Dictionary* (11th ed. 2019).

The question is therefore whether Speaker Bonnen solicited any gain of something to which a price can be assigned. There are at least two ways to conceptualize how Speaker Bonnen might have solicited a benefit:

- By requesting Empower Texans to “pop” Speaker Bonnen’s perceived rivals within the Republican primary, Bonnen might conceivably improve his odds of re-election as Speaker.³ Re-election to that office is a benefit because it entitles

¹ Note that “petition refused” does not carry the same weight in a criminal case that it does in a civil case. The Court of Criminal Appeals refuses all petitions for discretionary review that it does not grant.

² See footnote 1 regarding petition history for criminal cases.

³ Promises or threats made by a person, or benefits accepted by a person, to specifically influence the casting of a vote for Speaker constitute “legislative bribery” under Subchapter C of Texas Government Code Chapter 302. “Person”

Bonnen to use of the Speaker's Apartment, and other fundraising and staffing benefits. Other members of the Legislature must rent or purchase living quarters when they are in Austin, often at a cost that exceeds the per diem the State gives to Legislators while in the capital city on state business. The use of the Apartment could therefore be assigned a price.

- If Empower Texans were to agree to not fund Bonnen's opponent, Bonnen could plan to reduce his own campaign spending, thereby allowing him to use the political contributions he receives for other legitimate purposes, such as to defray officeholder expenditures.

Even if Speaker Bonnen did not solicit a benefit for himself, the definition of "benefit" includes benefits "to any other person in whose welfare [Bonnen] has a direct and substantial interest."

The Eighth Court of Appeals has interpreted "direct and substantial interest" in a case involving a city councilman offering benefits to business owners in exchange for their public support of an annexation effort. *Gandara v. State*, 527 S.W.3d 261 (Tex. App.—El Paso 2016, pet. ref'd).⁴ The court applied the "common meaning" of the words "direct" and "substantial" to conclude that "the beneficiary's interest in the welfare of the other 'person' cannot be unbroken by any intermediary or agency, and not speculative or illusory, but of considerable value." *Id.* at 273-74. Later, however, the court stated that "'[d]irect and substantial interest' for the purposes of bribery must signify an individual or entity that can stand in [the beneficiary]'s stead more or less in *toto*." *Id.* at 276. This appears to be the only case interpreting "direct and substantial interest."

Speaker Bonnen's political allies could receive a benefit from Empower Texans if it refrains from donating to their opponents in the same way that Speaker Bonnen benefits – by not having to spend campaign funds to compete with a well-funded opponent. Speaker Bonnen's interest in the welfare of his allies is direct, as interpreted by *Gandara*. The more allies Speaker Bonnen has in the House, the easier he can enact his agenda. Arguably, his interest in their welfare is also "of considerable value," as their support allows him to maintain his position as Speaker and enact his agenda. However, it is doubtful that any of Speaker Bonnen's allies "can stand in [Bonnen]'s stead more or less in *toto*." If this last test is required, then Speaker Bonnen's requests on behalf of his allies did not violate the Bribery Statute.

b. Are any of these requests "political contributions"?

Another way that the Bribery Statute may be violated is by the solicitation of "any benefit that is a political contribution as defined by Title 15, Election Code," if made pursuant to an express agreement. Tex. Penal Code § 36.062(a)(4). While several of Speaker Bonnen's requests

includes both members and candidates for membership in the House of Representatives. However, because legislative bribery is limited to the casting of votes (as opposed to improving the chances of election by eliminating opposition), the panel finds the actions taken by Speaker Bonnen and Representative Burrows too tangential to invoke application of the legislative bribery statute.

⁴ See footnote 1 regarding petition history for criminal cases.

could be characterized as “political contribution[s] as defined by Title 15, Election Code,” Speaker Bonnen did *not* request that Mr. Sullivan make any political contributions to himself. The next question is whether Speaker Bonnen requested a political contribution to “any other person in whose welfare [he] has a direct and substantial interest.”

Under *Gandara*, discussed above, it is unlikely that Speaker Bonnen’s interest in the welfare of opponents of his enemies is direct, though it may be substantial. Certainly, none of the individuals for whom Bonnen requested political contributions could “stand in [his] stead more or less in *toto*.”

The remaining question is whether the benefits are “political contributions” such that the exception in subsection (d) applies. To the extent Bonnen is asking Mr. Sullivan to affirmatively donate to certain campaigns, the benefits are likely “political contributions,” as the statute does not specify that only political contributions *to the beneficiary* are excluded. However, to the extent Speaker Bonnen is asking Mr. Sullivan to *refrain* from donating to particular campaigns, the benefit is likely not a “political contribution.”

c. Is it a defense to prosecution under the Bribery Statute that Speaker Bonnen has no power to directly grant press credentials?

No. “It is no defense to prosecution under this section that a person whom the actor sought to influence was not qualified to act in the desired way whether because he had not yet assumed office or he lacked jurisdiction or for any other reason.” Tex. Penal Code § 36.02(b).

d. Is it a defense to prosecution under the Bribery Statute that the press credentials have no specific monetary value?

No. The statute is not limited to exercises of official discretion or official actions that confer monetary benefit. Clearly Empower Texans considered the press credentials to have significant value because it filed a lawsuit seeking to force Chairman Geren to issue them.

B. Prohibited Gift

1. Text of statute

Sec. 36.08. GIFT TO PUBLIC SERVANT BY PERSON SUBJECT TO HIS JURISDICTION. (f) A member of the legislature . . . commits an offense if he solicits, accepts, or agrees to accept any benefit from any person.

Sec. 36.10. NON-APPLICABLE. (a) Sections 36.08 (Gift to Public Servant) and 36.09 (Offering Gift to Public Servant) do not apply to:

...

(4) a political contribution as defined by Title 15, Election Code[.]

2. Analysis

For all the reasons outlined in the section on bribery, it is possible to interpret a “benefit” to include Mr. Sullivan’s refraining from donating to certain opponents of Speaker Bonnen and his allies, which is also not a “political contribution” such that the exception applies. The same limitations to “substantial and direct interest” discussed by the Eighth Court of Appeals in *Gandara* similarly apply.

C. Abuse of Official Capacity

1. Text of statute

Sec. 39.02 (a) A public servant commits an offense if, with intent to obtain a benefit or with intent to harm or defraud another, he intentionally or knowingly:

(1) violates a law relating to the public servant’s office or employment; or

(2) misuses government property, services, personnel, or any other thing of value belonging to the government that has come into the public servant’s custody or possession by virtue of the public servant’s office or employment.

Sec. 39.01 (2) “Misuse” means to deal with property contrary to:

(A) an agreement under which the public servant holds the property;

(B) a contract of employment or oath of office of a public servant;

(C) a law, including provisions of the General Appropriations Act specifically relating to government property, that prescribes the manner of custody or disposition of the property; or

(D) a limited purpose for which the property is delivered or received.

2. Analysis

The recording suggests that Speaker Bonnen might have attempted to misuse “services, personnel, or any other thing of value belonging to the government that has come into the public servant’s custody or possession by virtue of the public servant’s office or employment items” in two forms.

First, press credentials are perhaps “services” and are likely a “thing of value.” But it does not appear that the credentials came into Speaker Bonnen’s custody or possession, and therefore Speaker Bonnen’s attempts to distribute them would not constitute a violation, even if it would otherwise be a “misuse.”

Second, there might be a misuse of “personnel” if Speaker Bonnen asked any state employee to create or provide the “list.” The Report does not satisfactorily answer who created the “list” and absent such information, it cannot be determined that Speaker Bonnen misused his office in this regard.

Representative Burrows conveyed the “list” to Sullivan after Speaker Bonnen left the room, though from Speaker Bonnen’s earlier comments it is plain that Speaker Bonnen was aware of the “list” and consented to Sullivan’s receiving it.⁵ If Representative Burrows used State personnel or resources to compile the “list,” he could also be said to have violated Chapter 39.

Burrows has claimed that he “did not have a prepared list of Republican members [because] he did not have an expectation of the meeting going to the list.” Report at 17.36. Representative Burrows acknowledges that he and Speaker Bonnen had previously discussed which members of their caucus they could count on for support, and that he had “pulled up a picture” of the record vote on the taxpayer funded lobby bill from the 86th legislative session. Report at 17.36. Because this was allegedly the only recorded vote on which the Republican caucus was significantly divided during the session, Burrows asserted that it was the best indicator of who was and who was not with leadership on this and other issues of interest to their conservative constituents. Report at 17.37. No other evidence in the report confirms or refutes his explanation.

D. Criminal Conspiracy

1. Text of Statute

Sec. 15.02. (a) A person commits criminal conspiracy if, with intent that a felony be committed:

- (1) he agrees with one or more persons that they or one or more of them engage in conduct that would constitute the offense; and
- (2) he or one or more of them performs an overt act in pursuance of the agreement.

(b) An agreement constituting a conspiracy may be inferred from acts of the parties.

⁵ Dennis Bonnen: And I hope you won’t fund about 90 percent of any others that show up in a Republican primary this time, and he’ll show you the list of who we hope someone will show up and we hope you will fund.

Transcript at 36.

2. Analysis

The transcript supports the conclusion that Speaker Bonnen and Representative Burrows coordinated on the “list” to give Sullivan before the meeting. See footnote 5. This prior coordination supports the inference that Bonnen and Burrows agreed to ask Sullivan to target certain Republicans, but it does not support the inference that Bonnen and Burrows agreed to seek a benefit for Bonnen in exchange for Bonnen’s exercise of discretion as a public servant to obtain credentials for Texas Scorecard, except to the extent that possibly improving Bonnen’s odds of re-election as Speaker could be construed as a “benefit.” See Part I.A.2.a.

E. Conclusion regarding the Penal Code

Accepting these scant authorities as both exhaustive and persuasive, one could argue that Speaker Bonnen could be prosecuted for soliciting a benefit for himself (by improving his likelihood of being re-elected Speaker or reducing his upcoming campaign expenditures) or for his Republican allies, in whose interest he might have a “direct and substantial interest.” However, given both the lack of guiding case law and the dissimilarity between Speaker Bonnen’s actions and the common perception of bribery, prosecutorial discretion as this panel understands it would likely militate against bringing such a prosecution.⁶ In addition, Representative Burrows did not stand to gain any pecuniary benefit by Speaker Bonnen’s actions—he could not receive living quarters for his position or the other benefits associated with being Speaker, nor did Burrows ask Sullivan to refrain from donating to his primary opponent, as Bonnen did. In short, the scope of the key elements of the statute are not sufficiently clear, and the case authorities are too few, to conclude with any degree of confidence that prosecution against either Speaker Bonnen or Representative Burrows would be warranted under the Bribery Statute or Gift Statute.

II. Texas Constitution, Article XVI, Section 41

A. Text of provision

Article XVI, Section 41, provides in relevant part as follows:

[A]ny member of the Legislature or executive or judicial officer who shall solicit, demand or receive, or consent to receive, directly or indirectly, for himself, or for another, from any company, corporation or person, any money, appointment, employment, testimonial, reward, thing of value or employment, or of personal advantage or promise thereof, for his vote or official influence, or for withholding the same, or with any understanding, expressed or implied, that his vote or official action shall be in any way influenced thereby, or who shall solicit, demand and receive any such money or other advantage matter or thing aforesaid for another, as the consideration of his vote or official influence, in consideration of the payment or promise of such money, advantage, matter or thing

⁶ The laws of Texas vest in district and county attorneys the exclusive responsibility and control of criminal prosecutions. *Meshell v. State*, 739 S.W.2d 246, 254 (Tex. Crim. App. 1987).

to another, shall be held guilty of bribery, within the meaning of the Constitution, and shall incur the disabilities provided for said offenses, with a forfeiture of the office they may hold, and such other additional punishment as is or shall be provided by law. . . .

B. Analysis

While every Texas Constitution has explicitly prohibited bribery, the current provision is undoubtedly “the most detailed.” 3 Vernon’s Ann. Const. of the State of Texas 351, Interpretative Commentary to Article XVI, Section 41. It “expand[s] and modifie[s]” Article III, Section 32 of the 1869 Constitution, which provides in relevant part: “It shall be the duty of the Legislature immediately to expel from the body who shall receive or offer a bribe, or suffer his vote influenced by promise or preferment or reward” 2 George D. Braden, *The Constitution of the State of Texas: An Annotated and Comparative Analysis* 781 (1977).

The current Constitution, which originally included even more rigid restrictions on the length of legislative sessions than the current language provides for, changed the legislative duty from the active to the passive, while at the same time expressly defining the elements of the crime of bribery.

No court has held that a constitutional violation is itself a crime. Instead, Article XVI, Section 41, merely “authorize[s]” the enactment of statutes outlawing bribery. *Mutscher v. State*, 514 S.W.2d 905, 915 (Tex. Crim. 1974) (holding that because the “Bribery of an Officer” statute “implements the specific mandate” of Article XVI, Section 41, it could not violate the Speech and Debate clause of the Texas Constitution).

The constitutional prohibition against a member “solicit[ing] . . . directly or indirectly, for himself, or for another . . . any . . . thing of value or . . . of personal advantage or promise thereof, for his . . . official influence” is broad enough to cover many types of conduct, including Speaker Bonnen’s actions here. But because the provision itself is not self-executing, a conclusion that it has been violated leads to no tangible penalties without further action by a prosecuting arm of government or by the legislature itself.⁷ As mentioned above, what actions, if any, the Committee or the entire House might take is beyond the scope of the questions pose to this panel.

⁷ The recognized procedure for determining whether a public official has done any act that by law works a forfeiture of his or her office is through a *quo warranto* proceeding brought in the name of the State of Texas by the Attorney General or the district or county attorney of the proper district or county. See *Rosell v. Cent. W. Motor Stages, Inc.*, 89 S.W.3d 643, 651 (Tex. App.—Dallas 2002, pet. denied); see generally Tex. Civ. Prac. & Rem. Code Ch. 66.

III. Election Code, Title 15 Violations

A. Unlawfully Making or Accepting Contribution

1. Text of statute

Sec. 253.003 (a) A person may not knowingly make a political contribution in violation of this chapter.

(b) A person may not knowingly accept a political contribution the person knows to have been made in violation of this chapter.

Sec. 251.001

...

(2) "Contribution" means a direct or indirect transfer of money, goods, services, or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a transfer. The term includes a loan or extension of credit, other than those expressly excluded by this subdivision, and a guarantee of a loan or extension of credit, including a loan described by this subdivision. The term does not include:

(A) a loan made in the due course of business by a corporation that is legally engaged in the business of lending money and that has conducted the business continuously for more than one year before the loan is made; or

(B) an expenditure required to be reported under Section 305.006(b), Government Code.

(3) "Campaign contribution" means a contribution to a candidate or political committee that is offered or given with the intent that it be used in connection with a campaign for elective office or on a measure. Whether a contribution is made before, during, or after an election does not affect its status as a campaign contribution.

(4) "Officeholder contribution" means a contribution to an officeholder or political committee that is offered or given with the intent that it be used to defray expenses that:

(A) are incurred by the officeholder in performing a duty or engaging in an activity in connection with the office; and

(B) are not reimbursable with public money.

(5) “Political contribution” means a campaign contribution or an officeholder contribution.

2. Analysis

The Report contains no evidence suggesting that Speaker Bonnen directly or indirectly transferred anything to Mr. Sullivan, Empower Texans, or Texas Scorecard, or that any of them transferred anything to him. Thus, Speaker Bonnen neither “accept[ed]” nor “ma[de]” a contribution in violation of section 253.003 of the Election Code.

However, Election Code violations can also be *attempted*. Section 1.018 of the Election Code provides that section 15.01 of the Penal Code (Criminal Attempt) applies to violations of the Election Code.

While an “attempt to accept” does not fit the facts presented in the Report, there is an outstanding question about whether Speaker Bonnen “attempted” to “make” a contribution in violation of the Election Code.

The Penal Code provides that to “attempt” a crime, the individual must have a “specific intent to commit an offense” and do “an act amounting to more than mere preparation that tends but fails to effect the commission of the offense intended.” Tex. Penal Code § 15.01(a). Here, the question is whether Speaker Bonnen had the “specific intent” to make an illegal contribution and did “an act amounting to more than mere preparation that tends but fails to effect” the illegal contribution.

a. Are the press credentials a “contribution”?

The Texas Ethics Commission concluded that the credentials did not have a “specific monetary value.” But that is a different definition than the one supplied by the statute, which includes “any other thing of value.” “Value” can be defined as the “monetary worth or price of something,” but also as the “significance, desirability, or utility of something.” *Value, Black’s Law Dictionary* (11th ed. 2019).

In a concurring opinion, Justice Gonzales observed that while many definitions in the Election Code lack clarity, “[a]t least one thing is clear. An ‘expenditure’ is defined very broadly An expenditure as minor as the cost of drafting or copying an issue-oriented handbill or mailing a letter may trigger the Election Code’s requirements.” *Osterberg v. Peca*, 12 S.W.3d 31, 63 (Tex. 2000) (Gonzales, J., concurring); *see also Cook v. Tom Brown Ministries*, 385 S.W.3d 562, 603 (Tex. App.—El Paso 2012, pet. denied) (concluding that Church’s provision of space on its website to circulate petitions and facilitate recall election was a “contribution” under the Election Code). Under an expansive scope of the word “value,” the press credentials may be a “contribution.”

b. Is it contrary to the Election Code for Speaker Bonnen to “transfer” the credentials to Texas Scorecard?

Texas Scorecard is operated by Empower Texans, Inc., which is closely connected with the Empower Texans Political Action Committee. In his interview, Representative Geren insisted

that this connection rendered Texas Scorecard ineligible for media credentials.⁸ But even assuming that would make Texas Scorecard a political action committee for the purposes of the Election Code, it is not clear that the Election Code forbids a political action committee from accepting a contribution of press credentials. The credentials would not be given in another's name, Tex. Elec. Code § 253.001; the credentials would not be given by a lobbyist, Tex. Elec. Code § 253.006; the credentials were not accepted by Speaker Bonnen as a political contribution, Tex. Elec. Code § 253.007; nor are the credentials a cash contribution over \$100, Tex. Elec. Code § 253.033.

The Election Code also prohibits contributions to political action committees at certain times, Tex. Elec. Code §§ 253.034, .0341, and in certain places, Tex. Elec. Code § 253.039. Regardless of whether the recorded conversation took place at one of these restricted times or in one of these restricted places, nothing in the recording indicates that Speaker Bonnen intended any contribution to be made or accepted at any improper time or place.

B. Unlawfully Operating a Political Committee

1. Text of statute

Sec. 251.001(12) "Political committee" means two or more persons acting in concert with a principal purpose of accepting political contributions or making political expenditures. The term does not include a group composed exclusively of two or more individual filers or political committees required to file reports under this title who make reportable expenditures for a joint activity.

2. Analysis

The definition of political committee requires two or more persons to "act[] in concert." Tex. Elec. Code § 251.001(12). Speaker Bonnen and Mr. Sullivan did not agree to act in concert at any point during the recording. Speaker Bonnen asked Mr. Sullivan "[a]re you comfortable with this?" Transcript at 34, and made references to "trying to get through 2020," Transcript at 11, but at no point did Mr. Sullivan agree to accept Bonnen's "list," or to specifically spend or withhold funds. Moreover, both parties vigorously denied that they were trying to make an agreement.

Even if Speaker Bonnen and Mr. Sullivan could be said to have *attempted* to form a political committee, merely forming a committee is not a violation. Operating a committee without a treasurer is a violation, Tex. Elec. Code § 252.001; §253.031(b), but Speaker Bonnen and Mr. Sullivan could not have operated a committee that was never actually formed.

Furthermore, and more importantly, the Election Code excludes from the definition of "political committee" "a group composed exclusively of two or more individual filers or political committees required to file reports under this title who make reportable expenditures for a joint activity." Tex. Elec. Code § 251.001(12). Because Speaker Bonnen is an individual filer, and

⁸ According to Mr. Sullivan's written answers to the Rangers' questions, Empower Texans, Inc., is the publisher of Texas Scorecard and the "sponsor" of the Empower Texans PAC and Texans for Fiscal Responsibility PAC. Evidentiary Item S18-P1.

Empower Texans is a political committee, they would be entitled to “joint activity” without forming a new political committee.

C. Conclusion on the Election Code

The facts in the Report do not support a prosecution for violations of Title 15 of the Election Code.

IV. Government Code Chapter 572 Violations

A. Standards of Conduct, State Agency Ethics Policy

As a member of the legislature, Speaker Bonnen is an “elected officer” and consequently a “state officer” as defined by Texas Government Code Section 572.002(12). The two most relevant provisions are in subsection 572.051(a), which state that a state officer “should not”:

- “solicit any gift, favor, or service that might reasonably tend to influence the officer or employee in the discharge of official duties or that the officer or employee knows or should know is being offered with the intent to influence the officer’s or employee’s official conduct;
- “intentionally or knowingly solicit . . . any benefit for having exercised the officer’s . . . official powers or performed the officer’s . . . official duties in favor of another.”

1. Did Speaker Bonnen solicit a “favor” or “benefit”?

At least one statement made by Speaker Bonnen could be interpreted as soliciting a “favor” or “benefit” in exchange for Speaker Bonnen performing his official duties in favor of Mr. Sullivan, Empower Texans, or Texas Scorecard:

Dennis Bonnen: I guess that’s where I’m going, is can we kind of not waste our resources, yours and mine and everyone else’s, fighting over members that aren’t really a huge problem. You might not find they’ll be your favorites, but they’re not particularly a problem, and even help us out, and maybe kill off one or two or three that are never going to help. . . . But we’ve got people who beat our Republicans, that are not even trying to act like moderate Democrats, okay? Which is good for us because we ought to be able to take their heads off. **But I need you firing harder that way than these ways.** Does that make sense? **And let me tell you what I’ll do for you** -- real quick, you need to hear what I want to do for you.

Michael Quinn Sullivan: I don’t need anything done.

Dennis Bonnen: Well, no, you do. You do. **If we can make this work. I'll put your guys on the floor next session.**

Transcript, page 12 (emphasis added).

The “favor” or “benefit” is for Mr. Sullivan to direct his organization’s platform against certain “unhelpful” Republicans and some Democrats, in exchange for which Speaker Bonnen offers to perform his duties to put Mr. Sullivan’s “guys” on the floor – i.e., to arrange press credentials for Texas Scorecard.

2. Could Speaker Bonnen “solicit” a gift or favor in exchange for a discharge or exercise of official duties if assigning press credentials is not part of Speaker Bonnen’s official duties?

The Speaker is entitled to appoint the chair, vice-chair, and all members of procedural standing committees, including the House Administration Committee, which *does* have the authority to assign press credentials. H.R. 1, § 15(d) (“The speaker shall appoint the chair and vice-chair of each standing procedural committee and the remaining membership of the committee.”); *see also* H.R. 3, § 16 (designating the House Administration Committee as procedural). It would be well within Speaker Bonnen’s official duties to appoint members to the House Administration Committee who would agree to grant credentials to Texas Scorecard.

B. Conclusion on Government Code Section 572

Speaker Bonnen’s conduct likely violated section 572.051(a) of the Government Code; however, subsection (b) of this section provides no independent statutory consequences for a state official who violates subsection (a).

V. House Rules Violations

A. Rule 5, Floor Procedure

Section 20. Media Access to House Chamber — (a) When the house is in session, no media representative shall be admitted to the floor of the house or allowed its privileges unless the person is: . . . (2) not engaged in any lobbying or paid advocacy, advertising, publicity, or promotion work for any individual, political party, corporation, organization, or government agency.

B. Analysis

Speaker Bonnen’s statement to Mr. Sullivan that he will “put your guys on the floor next session” is a reference to Texas Scorecard’s past failed attempts to secure press credentials.

In his interview with the Rangers, Chair of the House Administration Committee Charlie Geren stated that Texas Scorecard was not given credentials because it is “an arm of Empower Texans, which operates a PAC,” Report at 22, and that Bonnen would have to “find another

Chairman or ask [Geren] to step down” if Bonnen wanted to give Texas Scorecard press credentials, Report at 23.

If Representative Geren were correct that Texas Scorecard is engaged in lobbying, paid advocacy, advertising, publicity or promotion work for Empower Texans Political Action Committee, then it would be a violation of House Rule 5 for Speaker Bonnen to arrange for Texas Scorecard to receive credentials.

Conclusion

In our opinion, the information produced for the Public Integrity Unit Report militates against criminal prosecution of either Speaker Bonnen or Representative Burrows. As stated in this memorandum, we did not consider what actions the Committee or the House as a whole might take regarding Speaker Bonnen’s or Representative Burrows’ actions.

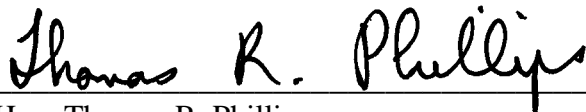
Respectfully submitted,

/s/ Patricia Gray (by permission)

Hon. Patricia Gray



Hon. Will F. Hartnett



Hon. Thomas R. Phillips