

TEXAS BUSINESS & COMMERCIAL QUARTERLY

★ JOHN W. FAINTER, JR. ★ SECRETARY OF STATE ★

The Sixty-Eighth Legislature made several changes to the laws relating to the ethical conduct of public officials. In addition to creating the State Ethics Advisory Commission, the legislature significantly amended three major ethics statutes that require public disclosure filings. The following review of those changes was prepared by the staff of the Elections Division of the Office of the Secretary of State. While this article is not intended to be an exhaustive study of the legislation, it is intended to alert interested parties to significant changes in the law. We recommend you obtain a copy of any bill in which you have a particular interest.

The barometers section of the Quarterly was written by Celia Morgan and Howard Savage, professors in the Department of Finance and Economics at Southwest Texas State University, and was based on data collected by this office.

Changes in Ethics and Public Disclosure Filings

In response to growing public concern over the ethical conduct of public officials, the 68th Legislature created the State Ethics Advisory Commission. The commission is composed of nine appointed members and the attorney general and secretary of state, who serve as nonvoting members. The governor appoints five of the voting members—three public members and the legal counsel of the two major political parties. The lieutenant governor and the speaker each appoint two members. The Secretary of State's Office supplies the commission with basic legal and clerical support staff.

The commission has no investigatory or enforcement powers but is authorized to issue written advisory opinions on the applications of the following ethics laws: TEX. REV. CIV. STAT. ANN. article 6252-9b (Standards of Conduct of State Officers and Employees); TEX. REV. CIV. STAT. ANN. article 6252-9c (The Lobby Control Act); TEX. ELEC. CODE ANN. Chapter 14 (The Political Funds Reporting and Disclosure Law); TEX. PENAL CODE ANN. Chapter 36 (Bribery and Corrupt Influence); TEX. PENAL CODE ANN. Chapter 39 (Abuse of Office); and TEX. REV. CIV. STAT. ANN. article 5428a (Candidate for Speaker: Campaign Financing) and article 5428b (Legislative Bribery). The commission may issue an opinion on its own initiative or on the confidential written request of a person subject to these laws. Reasonable reliance upon a written

advisory opinion issued by the commission is a defense to criminal prosecution or civil liability arising from a violation of these ethics laws. Summaries of the opinion requests and summaries of the issued opinions will be published in the Texas Register.

In addition to creating the State Ethics Advisory Commission, the 68th Legislature sought to clarify and strengthen the three major ethics statutes that require public disclosure filings: the Lobby Control Act; the Political Funds Reporting and Disclosure Law; and the Standards of Conduct of State Officers and Employees Act. The following is a discussion of the principal changes made in these laws in the recent legislative session.

The Lobby Control Act, which requires the registration of certain lobbyists and disclosure of their lobby activities, was amended by Senate Bill 923, effective October 1, 1983, and House Bill 2154, effective September 1, 1983. The most significant change made to the Lobby Control Act was the broadening of the scope of the Act to include administrative action lobbying. As of October 1, 1983, those persons who communicate directly with members of the legislative or executive branch in an attempt to influence administrative action and who trigger the compensation and expenditure thresholds under §3 of the act must register with the Office of the Secretary of State and report expenditures made in relation to such activities. 'Administrative action' is defined in the Lobby Control Act, Section 2(10) as 'rulemaking, licensing, or any other matter that may be a subject of action by a state agency, including the proposal, consideration, or approval of the matter.'

Although Senate Bill 923 broadened the overall scope of the Lobby Control Act, it narrowed the registration requirement placed on those who communicate directly with a member of the legislative or executive branch for lobby purposes. Before October 1, 1983, a person was required to register only if he expended more than \$200 in a calendar quarter on lobby activities, not including his own travel, food, lodging expenses, or membership dues, or if he received compensation or reimbursement in excess of \$200 in a calendar quarter for such activities. Under the new bill, a person must now exceed the \$200 threshold in a calendar quarter for *both* expenditures made *and* compensation or reimbursement received before he is required to register. Senate Bill 923 clarified an existing exemption in §4 and added two further exemptions, expressly excepting the so-called 'social lobbyists' from the Act. Therefore, persons whose only activity is attendance at a meeting or entertainment event paid for entirely by a business entity, union, or association and persons whose only compensation or reimbursement is for lost wages and actual expenses incurred in connection with attendance at such a meeting or entertainment event are no longer required to register under the Act.

The 68th Legislature also substantially altered the information that registrants must include on the registration form under §5 of the Lobby Control Act and the supplemental registration and activities report under §6. A registrant is no longer required to disclose on either the registration form or the activities report his position on legislation that is the subject of his lobby activities. Previous law required the registrant to include on his registration form a specific description of or the bill number of each legislative act; this provision now requires only a list of specific categories of subject matters about which the registrant has lobbied. On the registration form, the registrant is no longer required to include the name and address of each person who, during the preceding year, paid dues or other assessment in excess of \$500 to the registrant or to the person who retains the registrant. However, if the registrant lobbies on behalf of members of a group other than a corporation, he must disclose the name of each person in the group who makes policy decisions relating to the lobby activity.

To ensure current information, the Lobby Control Act now expressly provides for the filing of an amended registration form whenever there has been a change in the information previously reported on the form. The amended form must be filed with the Office of the Secretary of State not later than the date the next supplemental registration and activities report is due.

Section 6 of the Lobby Control Act requires registrants to file periodic activities reports with the Secretary of State's Office disclosing certain categories of expenditures made by the registrant or by others on his behalf. Under Senate Bill 923, the registrant must continue to report entertainment expenditures made for lobby purposes, but the bill clarifies and broadens the definition of "entertainment" to include "food, beverages, maintenance of a hospitality room, sporting events, theatrical and musical events," as well as any transportation, lodging, or admission expenses incurred in connection with the entertainment. A registrant must now specifically include expenditures in the form of awards as well as gifts and loans. Expenditures made under the general categories of 'postage,' 'telegraph,' and 'publication, printing, and reproduction' are no longer included in the activities report. However, the registrant must report total expenditures made for partisan broadcast or print advertisements, direct mailings, and other mass media communications made to persons other than members, employees, or stockholders of an entity that retains the registrant.

In recognition of the need to have clarification of the Lobby Control Act as it relates to specific situations, Senate Bill 923 gives the Office of the Secretary of State authority to interpret the Act. Section 14A provides that the Secretary of State's Office shall issue written advisory opinions based on real or hypothetical situations arising under the Act in response to writ-

ten requests. Each opinion will be published in the *Texas Register* and made available for public inspection at the Office of the Secretary of State and at the office of the *Texas Register*. Reasonable reliance on an advisory opinion issued by the Office of the Secretary of State is a defense to criminal prosecution or civil liability arising under the Act.

The Lobby Control Act was also amended by House Bill 2154 to provide a civil penalty of \$100 for the late filing of any registration form or activities report required by this Act. Upon determining that a registration form or activities report is late, the Office of the Secretary of State will notify the person responsible for filing and the appropriate state attorney.

The Political Funds Reporting and Disclosure Law, TEX. ELEC. CODE ANN. Chapter 14, imposes record keeping and disclosure requirements on candidates for public office, office holders, political committees, and other persons. This law was most significantly amended in the recent legislative session by House Bill 2154.

Before September 1, 1983, Chapter 14 placed no restrictions on the manner in which a person could use or dispose of political contributions, nor did it limit the length of time a person could retain such contributions. House Bill 2154 added Article 14.03d, which prohibits candidates or office-holders from converting to personal use contributions accepted on or after September 1, 1983. This prohibition does not affect political committees nor does it apply to contributions accepted before the effective date of the Act. Article 14.07a was also amended to limit the length of time a person may retain contributions. If an individual still has unexpended contributions six years from the time he left office or ceased to be a candidate, he must dispose of these funds in one of six specified ways and report the disposition by filing a sworn statement within 30 days after the end of the six-year period.

Prior law did not require unopposed candidates to file sworn statements and required other candidates and specific purpose political committees to file only three periodic sworn statements revolving around the election. House Bill 2154 increased the frequency for filing sworn statements of contributions and expenditures under Article 14.07 and extended the filing requirement to encompass all candidates, whether opposed or unopposed. The filing of a designation of campaign treasurer under Article 14.02 is now considered an affirmative act of candidacy. Therefore, a candidate who takes no other action in a campaign but to designate a treasurer must still file sworn statements at the times specified for candidates under Article 14.07(H), even if not involved in an election during a particular year.

Every candidate and specific purpose political committee must now file two sworn statements covering activity for each calendar year in which the election does not occur. The two sworn statements must be filed on or before July 15 of each non-election year and on or before January 15 of the following year.

To report activity in the calendar year in which the election occurs, opposed candidates and specific purpose political committees are still required to file the three periodic sworn statements, in addition to the annual January 15 statement if required. Unopposed candidates file two sworn statements covering activity in an election year on or before July 15 and on or before the following January 15. A major innovation created by House Bill 2154 is the modified reporting procedure under Article 14.07b. A candidate or political committee not intending to accept total contributions exceeding \$500 or to make total expenditures exceeding \$500 in the election may elect to follow this procedure by filing a declaration of intent at the same time the designation of campaign treasurer is filed. If this amount is not exceeded, the person need only file one sworn statement not later than the 30th day after the election. This modified reporting procedure will be especially important to local candidates operating on a limited campaign budget.

Office-holders and specific purpose political committees assisting office-holders must also file two sworn statements every year on or before July 15 and on or before January 15 to report all activity not previously reported. The filing deadlines for general purpose political committees were not changed by the 68th Legislature.

House Bill 2154 amended Chapter 14 to further regulate political committees involved in elections for a state or district office. Such a political committee can not make a contribution or an expenditure in relation to such an election, unless the committee's designation of campaign treasurer has been filed before the 30th day preceding the election. In addition, Article 14.02(B)(2) provides that each specific purpose political committee in an election involving a state or district office or a statewide or district measure and each general purpose political committee may designate an assistant campaign treasurer to act in the absence of the campaign treasurer.

House Bill 2154 also clarified Chapter 14 as it applies to corporations or labor organizations. Article 14.03 now expressly authorizes any corporation or labor organization to make contributions of corporate or organizational funds to political committees that support or oppose measures exclusively. It also allows them to make direct expenditures in a measure election by complying with Article 14.03 as if the entity were an individual by filing sworn statements as applicable.

The Secretary of State's Office is now required to notify each person responsible for filing sworn statements with this Office of the approaching deadline for filing a sworn statement under Chapter 14. As is also required under the Lobby Control Act, the Office of the Secretary of State shall determine whether a statement is late. Upon making that determination, this Office shall notify the person responsible for the filing and the appropriate state attorney. The person responsible for the late filing is civilly liable to the State for \$100.

The Standards of Conduct of State Officers and Employees statute requires financial disclosure by certain public officers, employees, and candidates in an attempt to expose, and thereby discourage, possible conflicts of interest. The substantive provisions of this Act were not amended by the 68th Legislature. However, House Bill 2154 added section 12A to the Act to impose a civil penalty of \$100 for the late filing of a disclosure statement, comparable to similar provisions added to the Lobby Control Act and the Political Funds Reporting and Disclosure Law.

This review of recent ethics legislation is not intended to be an exhaustive study. Additional information and copies of individual bills may be obtained from the Disclosure Filing Section of the Office of the Secretary of State. The cost for plain copies is \$0.55 for the first page and \$0.15 per page thereafter. This section may be contacted by calling (512) 475-5619 or by writing:

Secretary of State
Disclosure Filings Section
P. O. Box 12887
Capitol Station
Austin, Texas 78711

Secretary of State Barometers

Business and commercial data accumulated by the Office of the Secretary of State include total transactions, net additions to the business stock, commercial code filings, and corporate charters granted by standard metropolitan area. The second quarter figures for the data reported in our continuing series are discussed in the following section.

Total Transactions

The number of total transactions recorded by the Statutory Filings Division of the Secretary of State's Office increased in the second quarter of 1983. This volume, presented in Table 1, was 60,526, an increase of 6,260 over the second quarter of 1982 and an increase of 8,603 over the first quarter of this year.

When compared with transactions in the first quarter of 1983, the data in Table 1 show accelerated rates of entry and exit of business in the second quarter of 1983. This acceleration for the second quarter is demonstrated by the following data:

- Filings for new corporate charters increased by 9%, with 11,181 charters filed.
- Filings of new certificates of authority increased by 11%, with 921 charters filed.
- Filings of new limited partnerships increased by about 13%, to 1,141 filings.

The rate of exit also grew, and the number of dissolutions increased to 1,408, about 33% more dissolutions than in the first quarter.

Another indication of future business activity, name reservations, also increased in the second quarter of 1983. The second quarter rate was 3,497, about 11% over the first quarter rate.

A similar pattern may be observed when the second quarter data are compared to 1982 second quarter data. The rate of filings of articles of incorporation were up 17% over comparable filings in 1982, which coupled with the growth in limited partnerships more than compensates for the modest declines in certificates of authority. There was an increase in the rate of corporate dissolutions of about 10% over the year before.

Table 1

TYPE OF TRANSACTIONS	1983 SECOND QUARTER	1983 FIRST QUARTER	CHANGE FROM 1ST QUARTER 1983 TO 2ND QUARTER 1983	1982 SECOND QUARTER	CHANGE FROM 2ND QUARTER 1982 TO 2ND QUARTER 1983
TOTALS	60,526	51,923	8,603	54,266	6,260
Articles of Incorporation	11,818	10,812	1,006	10,129	1,689
Articles of Incorporation (non-profit)	1,301	1,047	254	1,024	277
Professional Corporations	194	155	39	436	(242)
Professional Associations	137	67	70	284	(147)
Certificates of Authority	921	829	92	954	(33)
Limited Partnerships	1,141	1,014	127	933	208
Limited Partnership Amendments	908	936	(28)	826	82
Limited Partnership Cancellations	91	62	29	71	20
Trust Companies	1	0	1	1	0
Trust Companies Amendment	7	4	3	8	(1)
Articles of Amendment (profit)	5,511	3,890	1,621	6,266	(755)
Articles of Amendment (non-profit)	691	229	462	286	405
Articles of Amendment (professional corporation)	130	34	96	44	86
Articles of Amendment (professional association)	1,092	867	225	97	995
Amended Certificate of Authority	430	338	92	382	48
Articles of Corrections	144	117	27	61	83
Name Reservations	3,497	3,145	352	2,814	683
Name Registration	86	105	(19)	85	1
Dissolutions	1,408	1,062	346	1,278	130
Withdrawals	135	198	(63)	104	31
Terminations	43	67	(24)	62	(19)
Information Letters	4,269	3,964	305	4,061	208
Articles of Merger	168	179	(11)	145	23
Change of Registered Agent and Office	5,279	2,906	2,373	6,531	(1,252)
Reinstatements	1,293	881	412	1,147	146
No Pay Forfeitures	31	36	(5)	16	15
Forfeitures	148	828	(680)	450	(302)
Certifications	18,122	16,573	1,549	14,301	3,821
Assumed Names	1,530	1,578	(48)	1,470	60

Source: Secretary of State, Statutory Filings Division, Corporations Section (August 1983)

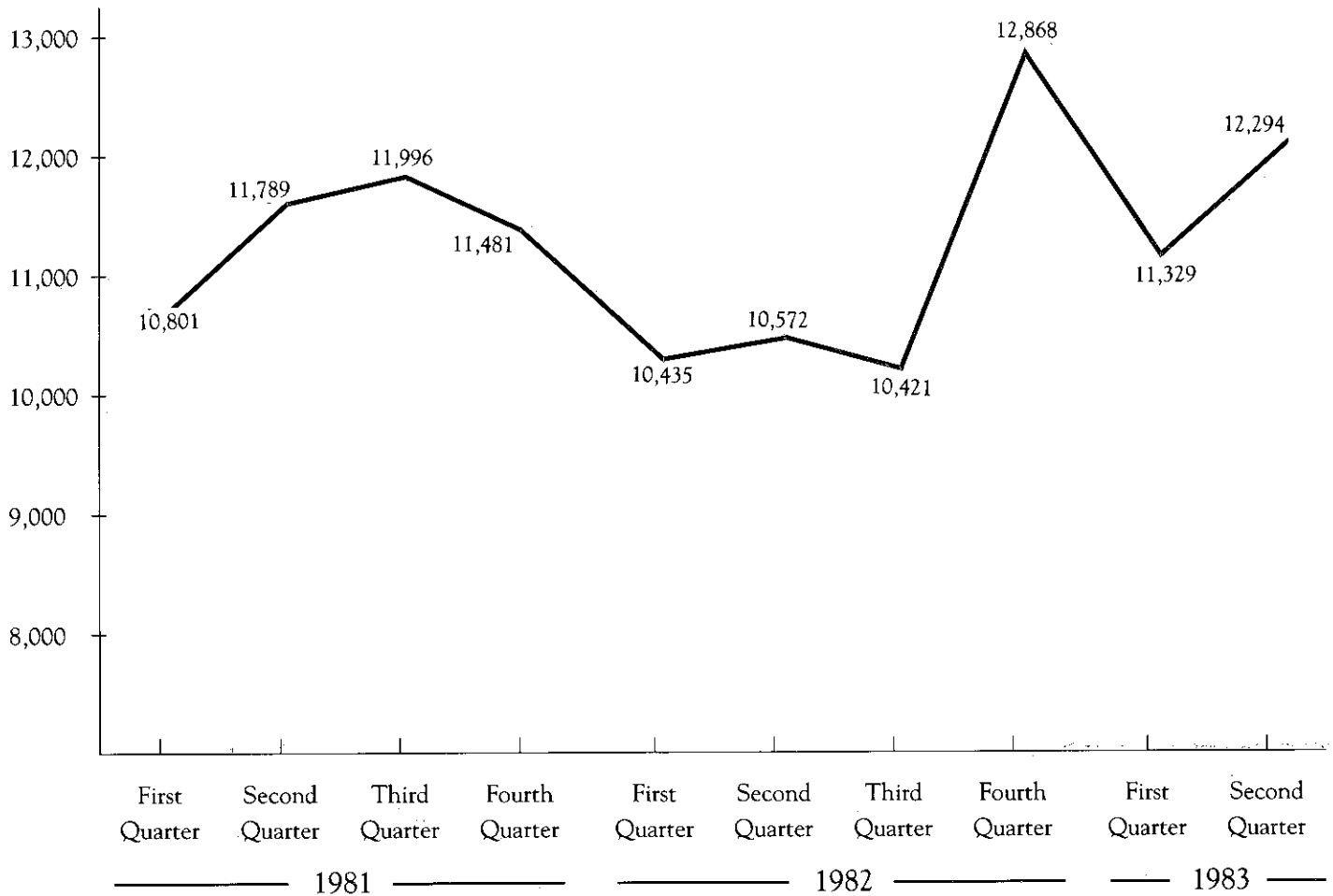
Net Additions to the Business Stock

The quarterly net additions to the business stock for 1981 through 1983 are presented in Figure 1. These data show the steady growth of the Texas business community. The 12,294 additions in the second quarter of 1983 are about 9% above those in the first quarter of 1983. These additions are also only 5% below the high for the series of 12,868 recorded in the fourth quarter of 1982. If the previous pattern holds, the data for the first quarter and the second quarter would suggest

a total increase in the business stock of 47,246 for 1983. This increase is in excess of any previous year presented in this series by about 3%.

The business stock includes all existing corporations, limited partnerships, and certificates of authority recorded by the Office of the Secretary of State. The net additions to the business stock equal the sum of new corporate charters, new limited partnerships, and new certificates of authority minus the sum of voluntary dissolutions, withdrawals, and terminations.

Figure 1
 Net Additions to the Business Stock by Quarter
 1981 1983



Source: Secretary of State, Statutory Filings Division, Corporations Section (August, 1983)

UCC

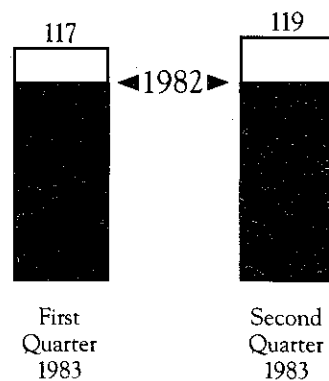
The steady expansion of the Texas business structure can also be noted from the data recorded at the Uniform Commercial Code Section of the Secretary of State's Office. Uniform Commercial Code filings in the second quarter increased 19% over the same period in 1982 (Figure 2).

The dollar value of these filings is not known because the filings have no stated value when filed at the Secretary of State's Office. However, if the real value per unit does not change, the greater number of these filings indicates increased credit requirements. The modest increase in UCC filings is encouraging, indicating that sufficient credit is being extended to maintain the business tempo.

New Business Incorporations in SMSA Areas

The absolute numbers of new charters granted in each of the 26 Texas Standard Metropolitan Areas for the second quarter

Figure 2
 Index of Uniform Commercial Code
 Financing Statements, Federal Tax Liens
 and Utility Security Agreements



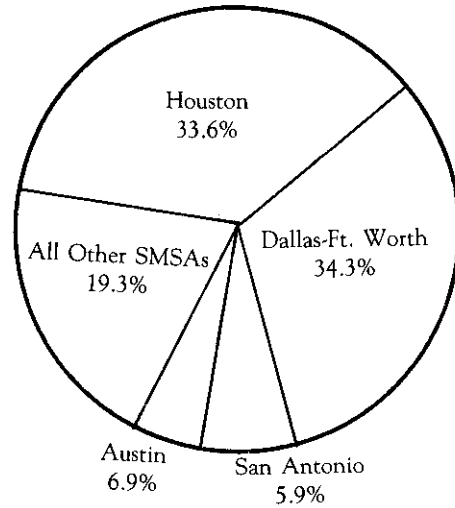
Source: Secretary of State, Statutory Filings Division, Uniform Commercial Code Section (August 1983)

of 1983 are shown in Table 2. The breakdown of new business incorporations between the Standard Metropolitan Areas is presented in Figure 3.

The total number of incorporations in Texas SMSAs increased in the second quarter of 1983 when compared to the first quarter data. There were 10,436 incorporations in April, May, and June, amounting to an increase of about 6%. This improvement was still 3% less than the high in the fourth quarter of 1982.

The major metropolitan centers of Houston and Dallas-Fort Worth still accounted for a large share of total incorporations. With 3,505, Houston accounted for 33.6% of SMSA incorporations, while the 3,575 incorporations in the Dallas-Fort Worth area accounted for 34.3%. This is a slight change over the first quarter when the percentages were 34% for the Houston area and 35.3% for the Dallas-Fort Worth area. Austin, San Antonio and the other SMSAs accounted for a slight relative increase. Austin had 6.9%, San Antonio 5.9%, and all other SMSAs had 19.3% of the total for the second quarter of 1983. This quarter's figures compare to 6.2% for Austin, 5.6% for San Antonio, and 18.9% for all other SMSAs in the first quarter of 1983.

Figure 3
Breakdown of New Business Incorporations by SMSA April-June, 1983



Source: Secretary of State, Statutory Filings Division, Corporations Section (August 1983)

Table 2
Corporate Charters Granted, 26 Texas SMSAs
April 1983 - June 1983

STANDARD METROPOLITAN STATISTICAL AREA	APRIL	MAY	JUNE	2ND QUARTER TOTALS	1983 TOTALS
Abilene	23	31	34	88	185
Amarillo	27	36	44	107	187
Austin	238	228	252	718	1,334
Beaumont-Port Arthur-Orange	61	35	53	149	272
Brownsville-Harlingen-San Benito	31	27	27	85	194
Bryan-College Station	20	21	18	59	124
Corpus Christi	77	63	67	207	389
Dallas-Ft. Worth	1,202	1,203	1,170	3,575	7,048
El Paso	81	69	56	206	378
Galveston-Texas City	35	28	35	98	198
Houston	1,185	1,219	1,101	3,505	6,868
Killeen-Temple	32	23	19	74	129
Laredo	22	11	19	52	94
Longview-Marshall	45	31	36	112	203
Lubbock	33	38	29	100	191
McAllen-Pharr-Edinburg	41	43	42	126	237
Midland	32	45	31	108	225
Odessa	34	32	25	91	173
San Angelo	18	13	13	44	93
San Antonio	217	198	203	618	1,173
Sherman-Denison	14	7	13	34	63
Texarkana	8	8	8	24	40
Tyler	29	29	30	88	173
Victoria	11	10	13	34	76
Waco	35	32	22	89	164
Wichita Falls	11	17	17	45	102
Totals	3,562	3,497	3,377	10,436	20,313

Source: Secretary of State, Statutory Filings Division, Corporations Section (August 1983)

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