



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 6

April 23, 1992

Determination to Accept or Refuse a Political Contribution. (AOR-7)

The Texas Ethics Commission has been asked to issue an opinion clarifying section 254.0391(b) of the Election Code. Section 254.0391 as a whole addresses political reporting during a special legislative session. It requires certain statewide officeholders, legislators, candidates and specific-purpose committees to report all political contributions received between the time of the governor's special session proclamation and the date of final adjournment of the special session. This reporting must take place not later than 30 days after the final adjournment. Subsection (b) of section 254.0391 provides as follows:

A determination to accept or refuse the political contribution shall be made not later than the third day after the date the contribution is received.

The requestor asks about the meaning of the phrase "a determination to accept or refuse." The specific question is whether the making of a "determination" to refuse a contribution would necessarily include actually returning the contribution. Although returning a contribution would be the strongest evidence of refusal, the determination to refuse a contribution and the return of a contribution are distinct acts.

Another provision of title 15, section 254.034 of the Election Code, makes a clear distinction between a determination to refuse a contribution and the return of the contribution. Under section 254.034, a determination to accept or refuse a contribution received during a regular reporting period must be made by the end of that period. If the contribution is refused, it must be returned within 30 days of the last day to report, otherwise the contribution is deemed accepted. Thus, under section 254.034, the return of a contribution is a separate act from the determination to refuse a contribution. We think the legislature used the phrase "determination to refuse" in the same sense in section 254.0391(b). Thus, section 254.0391(b) does not require that a person return a contribution within three days in order to refuse the contribution. We caution, however, that even though the determination to refuse a contribution is distinct from the actual return of a contribution, it would be advisable for a person who has made a determination to refuse a contribution to take some action to provide evidence of the determination in case it is called into question. Further, we note that the commission has authority to require by rule that specific action be taken to evidence a determination to accept or refuse a contribution, and the commission may do so in the future.

As for the deadline for returning a refused contribution, we think section 254.034(c) requires that a contribution received during the reporting period described in section 254.0391(b) that is not accepted must be returned to the contributor not later than the 30th day after the deadline for filing a report for that reporting period.

SUMMARY

The determination to refuse a political contribution and the return of a political contribution are distinct acts for purposes of title 15 of the Election Code. Once a determination to refuse a contribution has been made, the contribution must be returned within 30 days after the deadline for filing a report for the reporting period during which the contribution is received.