



# TEXAS ETHICS COMMISSION



## ETHICS ADVISORY OPINION NO. 47

*September 9, 1992*

*Whether a candidate may give surplus funds to charity. (AOR-51)*

The Texas Ethics Commission has been asked to consider whether a candidate may give surplus funds to charity. Title 15 of the Election Code governs the use of political contributions. The two types of political contributions are campaign contributions and officeholder contributions. Elec. Code § 251.001(5). A campaign contribution is one given with the intent that it be used in connection with a campaign for elective office or on a measure. *Id.* § 251.001(3). An officeholder contribution is one given with the intent that it be used to defray expenses incurred by an officeholder in performing a duty or engaging in an activity in connection with the office. *Id.* § 251.001(4).

A person may not retain political contributions for more than six years after the date on which the person either ceases to be a candidate or officeholder or files a final report, whichever is later. At the end of the six-year period, the former officeholder or candidate *must* remit any unexpended political contributions to one or more of the following:

- (1) the political party with which the person was affiliated when the person's name last appeared on a ballot;
- (2) a candidate or political committee;
- (3) the comptroller of public accounts for deposit in the State Treasury [to be used only for financing primary elections];
- (4) one or more persons from whom political contributions were received [not to exceed the aggregate amount the candidate or officeholder received from a person during the last two years during which the candidate or officeholder accepted contributions], in accordance with Subsection (d);
- (5) a recognized tax-exempt, charitable organization formed for educational, religious, or scientific purposes; or
- (6) a public or private postsecondary educational institution or an institution of higher education . . . , solely for the purpose of assisting or creating a scholarship program.

*Id.* § 254.204(a). It is clear, then, that at the end of the six-year period a former candidate may give unexpended political contributions to certain charitable organizations. We understand the requestor's question to be whether a former candidate may use political contributions to make the type of charitable donations described in section 254.204(a)(5) before the end of the six-year period.

Title 15 prohibits the personal use of campaign or officeholder contributions. Elec. Code § 253.035(a), (c).<sup>1</sup> Prohibiting personal use of political contributions is not the equivalent of requiring political use of political contributions because title 15 recognizes a category of expenditures that are neither political nor personal. *See id.* § 254.031(4) (requiring the reporting of payments that are not political expenditures).

In setting out the exclusive list of expenditures that are permissible at the end of the six-year period, we think the legislature meant to identify certain expenditures that it did not consider to be personal ones even if they are not necessarily political expenditures. Therefore, we conclude that an expenditure of political contributions for one of the purposes set out in section 254.204 is not a personal use of political contributions under title 15. *See State Ethics Advisory Commission Opinion No. 2* (1984) (donating unexpended contributions to public schools is not personal use). Consequently, such an expenditure is permissible at times other than at the end of the six-year period.<sup>2</sup>

### SUMMARY

An expenditure of political contributions for one of the purposes set out in section 254.204 is not a personal use of political contributions under title 15.

---

<sup>1</sup> "Personal use" means a use that "primarily furthers individual or family purposes not connected with the performance of duties or activities as a candidate for or holder of a public office." Elec. Code § 253.035(d); *see id.* § 253.035(d)(1)-(2), (i) (listing specific expenditures that do not constitute "personal use").

<sup>2</sup> If a former candidate or officeholder could not use political funds for the purposes listed in section 254.204 except at the end of the six-year period, he or she would be required to retain unexpended contributions for the entire six-year period. We do not believe this was the legislature's intent. Rather, six years is the outer limit for retaining unexpended political contributions.