



# TEXAS ETHICS COMMISSION



## ETHICS ADVISORY OPINION NO. 105

*December 10, 1992*

*Whether campaign contributions may be used to defray legal expenses incurred in defending a lawsuit to collect on a campaign loan. (AOR-113)*

The Texas Ethics Commission has been asked to consider whether a candidate may use campaign contributions to pay legal expenses incurred in defending a collection suit brought by the holder of a note signed by the candidate in consideration for a campaign loan.

Among the restrictions placed on the use of campaign contributions is that they must not be used to primarily further an individual or family purpose not connected with the performance of duties or activities as a candidate or officeholder.<sup>1</sup> This is known as the "personal use" prohibition. The statute specifically exempts certain uses of campaign contributions from the definition of "personal use." The exemption that is relevant to this advisory opinion permits using campaign contributions to defend a civil action brought against a person in his status as a candidate or officeholder.<sup>2</sup> Therefore, the threshold question is whether the bank's suit to collect on a loan made to the candidate on behalf of his campaign is brought against the requestor in his status as a candidate or officeholder.

In opinions of the secretary of state on an earlier version of this exemption, the propriety of using campaign contributions for legal expenses hinged on whether the expenses arose "as a direct consequence of performing an activity of office" and "as a direct result of performing an activity of office."<sup>3</sup> Election Law Opinion MAM-6 (1985) validated a state senator's use of campaign funds to defend against a libel suit brought by a constituent who was angered at the senator's participation in an alcohol licensing proceeding. Election Law Opinion MAM-7 (1986) validated a representative's use of campaign funds to defend against bribery charges.<sup>4</sup> Since those opinions were issued, the statute has been amended to include legal expenses for the activities of candidates. Extending the logic of those opinions to the current statute and fact situation, the test becomes whether the legal expense arose directly from the requestor's activities as a candidate. If the requestor negotiated the loan in his status as a candidate, then legal expenses to defend a civil suit to collect the loan arise directly from his activities as a candidate and were incurred because of his status as a candidate, and the candidate may use political contributions to pay such expenses.<sup>5</sup>

### SUMMARY

A candidate or officeholder may use campaign contributions to pay legal expenses incurred in defending a lawsuit brought to collect on a campaign loan if the loan was made to the candidate or officeholder in his status as a candidate or officeholder.

<sup>1</sup> See Elec. Code § 253.035(d) ("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).

<sup>2</sup> Section 253.035(i) of the Election Code provides:

"Personal use" does not include the use of contributions for:

- (1) defending a criminal action or prosecuting or defending a civil action brought by or against the person in his status as a candidate or officeholder; or
- (2) participating in an election contest or participating in a civil action to determine a person's eligibility to be a candidate for, or elected or appointed to, a public office in this state.

<sup>3</sup> See S.B. 1, 72d Leg., ch. 304, §§ 1.29(g), 1.39, at 1300, 1303 (rulings of secretary of state are authority for ethics commission).

<sup>4</sup> See also Attorney General Opinion JM-856 (1988) (allowing a sheriff to use campaign funds to reimburse personal funds spent to replace official funds).

<sup>5</sup> We assume that the legal fees will not be paid to an entity in which the candidate or officeholder has an interest. See Elec. Code § 253.041.