



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 149

June 24, 1993

Whether a successful candidate may use political contributions left over after a campaign to make a donation to a tax-exempt, nonprofit organization serving physically, mentally, and developmentally challenged individuals. (AOR-166)

The Texas Ethics Commission has been asked to consider whether a successful candidate may use political contributions left over after a campaign to make a donation to a tax-exempt, nonprofit organization serving physically, mentally, and developmentally challenged individuals. The officeholder in this case is employed by and has a family member served by the organization. Title 15 of the Election Code prohibits the conversion of political contributions to the personal use of a candidate or officeholder. Elec. Code § 253.035. "Personal use" is defined for purposes of this provision as "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." *Id.* § 253.035(d). The question posed here is whether a donation to an organization serving the physically, mentally, and developmentally challenged is, in general, a personal use of political contributions and, if not, whether the officeholder's personal involvement with the organization makes such a donation a personal use in this particular case.

The Ethics Commission examined the use of political contributions to make donations to certain charitable organizations in a previous opinion, [Ethics Advisory Opinion No. 47](#) (1992). That opinion concerned whether a former candidate was permitted to give surplus campaign funds to charity. The opinion noted that Election Code section 254.204(a), which requires a former candidate or officeholder to dispose of unexpended political contributions within six years of ceasing to be a candidate or officeholder, permits six options for the disposition. Those options include remitting the funds to "a recognized tax-exempt, charitable organization formed for educational, religious, or scientific purposes." Elec. Code § 254.204(a)(5). Because the Election Code prohibits the personal use of political funds, the commission concluded that the legislature did not consider any of the listed options to constitute personal use. Therefore, we determined that an expenditure for one of the purposes set out in section 254.204 is permissible "at times other than at the end of the six-year period." [Ethics Advisory Opinion No. 47](#) at 2 (1992). Although Ethics Advisory Opinion No. 47 assumed that the donor was no longer a candidate or officeholder, the analysis of the personal use issue applies equally to the situation at hand, where the charitable donation occurs before the donor has ceased to be a candidate or officeholder.

This brings us to the question of whether the organization at issue here would qualify as a "recognized tax-exempt, charitable organization formed for educational, religious, or scientific purposes." The commission has been informed that the organization is a tax-exempt, nonprofit, United Way agency. Among its basic functions are the provision of educational and vocational services to physically, mentally, and developmentally challenged children and adults, who are often referred by various independent school districts and other agencies. In our opinion, the organization clearly fits within the section 254.204(a)(5) description of a charitable organization formed for educational purposes. The only question remaining is whether the requestor's personal interest in this particular charitable organization renders the donation a personal use of campaign funds.

As cited above, a prohibited "personal use" of political contributions is one 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) (emphasis added). By specifying that the use must not *primarily* serve

individual or family purposes, the legislature has indicated that a use is not a prohibited personal use merely because it may have some incidental benefit to the individual candidate or officeholder. The donation here, a matter of a few hundred dollars, would serve the individual or family purposes of the requestor only to the extent that it contributed to the overall viability of the nonprofit organization that employs the officeholder and serves a family member of the officeholder, and to the extent that it permitted the organization to purchase materials that would ultimately benefit the family member as well as other organization clients. We stress that the donation would have no effect on the family member's tuition fees, as we have been informed that these are paid by a separate and unrelated association. Furthermore, the officeholder is not employed in an executive position in the organization and would not otherwise have any direct or indirect control over the disposition of the funds. In our opinion, the expenditure would primarily further the purposes of the charitable organization and the individuals that it serves. We therefore conclude that the requestor may use political contributions to make a donation to a tax-exempt, nonprofit organization serving physically, mentally, and developmentally challenged citizens without violating the prohibition on conversion of political contributions to personal use under the facts of this opinion request.

SUMMARY

An officeholder may use political contributions left over from a campaign to make a donation to a tax-exempt, nonprofit organization serving physically, mentally, and developmentally challenged citizens without violating the prohibition on conversion of political contributions to personal use.