



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 206

May 13, 1994

Source of funds that may be used to pay a fine assessed by the Texas Ethics Commission under section 254.042 of the Election Code (civil penalty for late report). (AOR-228)

The Texas Ethics Commission has been asked to consider what source of funds may be used to pay a fine assessed by the Ethics Commission under section 254.042 of the Election Code (civil penalty for late report). The requestor is the treasurer for a candidate against whom the Ethics Commission has assessed a \$100 fine for a late report. The requestor asks whether the fine should be paid from the candidate's personal funds, the treasurer's personal funds, or from political contributions.

Even though a late fine assessed against a candidate is the personal responsibility of the candidate,¹ it is *permissible* for payment to come either from political contributions or from the campaign treasurer's personal funds as well as from the candidate's personal funds. *See* Elec. Code §§ 254.041, 254.042. How the candidate reports the payment differs depending on the source from which the fine is paid.

Payment From Political Contributions

Under title 15 of the Election Code a candidate may use political contributions for purposes connected with activities as a candidate for an elective office. *Id.* § 253.035(d). A candidate may not use political contributions for purposes that primarily further individual or family purposes not connected with the performance of duties or activities as a candidate or holder of a public office. *Id.*

A rule adopted by the secretary of state when the Secretary of State's Office had administrative authority over title 15 of the Election Code provided, in part, as follows:

A candidate or office-holder may not utilize contributions accepted on or after September 1, 1983, for payment of the civil penalty. A political committee is permitted to use contributions for such purpose.

1 T.A.C. § 81.165 (West 1988), *repealed* 17 Tex. Reg. 370 (1992); *see also* Editor's Note following 1 T.A.C. § 81.138 (West Supp. 1993-94). This rule was apparently based on the idea that use of political contributions to pay a fine for late filing was an impermissible personal use.² We view the matter differently. Although a late fine is a personal obligation of a candidate, it is an obligation that is connected with the performance of duties or activities as a candidate.³ Accordingly, we conclude that payment of a fine for late filing is a political expenditure and may be made from political contributions. A candidate should report payment of a late fine from political contributions on Schedule F (political expenditures) of Form C/OH, the form candidates use to report political contributions and expenditures.

Payment From The Candidate's Personal Funds

A candidate may use personal funds to pay a civil penalty for late filing. The candidate should report the payment as a political expenditure from personal funds on Schedule G (political expenditures made from personal funds) of Form C/OH, the form candidates use to report political contributions and expenditures.

Payment From The Campaign Treasurer's Personal Funds

Although an individual candidate's campaign treasurer has no liability for a fine assessed against the candidate, the treasurer *may* pay a late fine assessed against the candidate. A candidate should report payment of a late fine by the treasurer as a contribution from the treasurer on Schedule A (political contributions other than pledges or loans) of Form C/OH, the form candidates use to report political contributions and expenditures.⁴

SUMMARY

Payment of a fine for filing a late report with the Texas Ethics Commission is a political expenditure.

¹ A candidate, not the campaign treasurer, is responsible for filing reports under title 15 of the Election Code. *See* Elec. Code §§ 254.063, 254.064. The campaign treasurer for a *candidate* has no legal responsibilities. In contrast, a campaign treasurer for a *political committee* is responsible for filing all reports for the political committee. *Id.* §§ 254.123, 254.124, 254.153, 254.154. Further, fines for late filing of political committee reports are assessed against the campaign treasurer for the political committee.

² The significance of the date in the rule (September 1, 1983) is that only political contributions accepted after that date are subject to the personal use prohibition. Elec. Code § 253.035(e).

³ Further, we do not see any basis for making a distinction between individual filers and political committees with respect to using political contributions to pay a late fine. The personal use restriction applies to specific-purpose committees as well as individuals.

⁴ If the treasurer paid the late fine without the candidate's knowledge or consent, the payment would not be a reportable contribution. *See generally* Elec. Code §§ 254.031(a)(1) (candidate must report political contributions *accepted*), 253.002 (direct campaign expenditure).