



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 224

September 9, 1994

Whether an officeholder may invest political contributions by purchasing stock; by purchasing stock through a margin account; by purchasing commodity futures, stock options, junk bonds; or by making personal loans. (AOR-250)

The Texas Ethics Commission has been asked to consider whether an officeholder¹ may invest political contributions by purchasing stock; by purchasing stock through a margin account; or by purchasing commodity futures, stock options, or junk bonds. The requestor also asks whether an officeholder may make loans with political contributions under various circumstances.

In regard to investments, we note that title 15 of the Election Code, which regulates the acceptance and expenditure of political contributions, does not expressly authorize the investment of political contributions. It does, however, anticipate that political contributions will be invested by stating that the prohibition against personal use of political contributions applies to "any interest and other income earned on" contributions. Elec. Code § 253.035(c). It is clear, therefore, that the legislature did not intend to prohibit a candidate or officeholder from investing political contributions.

We assume that in listing various types of investments the requestor intended to ask whether the degree of risk involved in a particular type of investment was relevant in determining whether a candidate or officeholder could make that type of investment with political contributions. Nothing in title 15 makes degree of risk a basis for concluding that a particular investment is or is not permissible. The only limit title 15 places on a candidate's or officeholder's investment of political contributions is that an investment may not constitute a conversion of a political contribution to the personal use of the candidate or officeholder. *Id.* § 235.035(a). "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." *Id.* § 235.035(d).

Whether a particular investment amounts to personal use is a question of fact in each case. For example, in most circumstances purchasing stock with political contributions would not constitute a conversion to personal use because the candidate's or officeholder's sole objective would be financial gain from capital appreciation or dividends, or both. Any such gain would be subject to the prohibition against conversion to personal use. *Id.* § 253.035(c). It is conceivable, though, that in some instances the primary purpose of a stock purchase would be personal. For example, the primary purpose might be to support a family business. Using political contributions to purchase stock for such a purpose would be impermissible. Additionally, an investment could constitute a conversion to personal use if the investment instrument itself could be converted to personal use. For example, a candidate or officeholder could not use political contributions to purchase a painting to hang in his or her living room, even if it were likely the painting would eventually be sold for a profit.

The request letter also asks about loans of political contributions. Specifically, the request letter asks about a loan with an interest rate reasonably in line with contemporaneous credit market conditions to either an individual not related to the officeholder or candidate or to a relative of the officeholder or candidate, such as a brother or son. A loan of political contributions would be impermissible if the loan constituted a conversion of political contributions to personal use. In our opinion a loan to a close relative such as a brother or son would clearly be a conversion to personal use. Whether a loan in other circumstances would constitute a conversion to personal use

would depend on the facts of the loan. We caution, though, that personal loans from political funds will almost always at least raise the issue of personal conversion.

SUMMARY

Nothing in title 15 makes degree of risk a basis for concluding that a particular investment is or is not permissible. The only limit title 15 places on a candidate's or officeholder's investment of political contributions is that an investment may not constitute a conversion of a political contribution to the personal use of the candidate or officeholder.

¹ Although the requestor specifically asks about an "officeholder," this opinion also applies to a candidate's use of political contributions.