



TEXAS ETHICS COMMISSION



****Overruled, Modified, Clarified, or Superseded****  **Opinion History**

ETHICS ADVISORY OPINION NO. 230

October 14, 1994

Whether certain transfers of political contributions constitute conversions to personal use. (AOR-257)

The Texas Ethics Commission has been asked to issue an advisory opinion in regard to a situation in which an officeholder placed \$800 of political contributions into an account used for personal expenditures. The transfer created a balance of \$821.20 in the "personal account." Over the next few days, the officeholder withdrew approximately \$200 in cash from the account. The officeholder also wrote checks on the account totalling approximately \$150. After those transactions occurred, the officeholder placed \$800 in personal funds into an account used for political expenditures. The Ethics Commission has been asked to consider whether a conversion of political contributions to personal use occurred in those circumstances and, if so, what amount of political contributions was converted to personal use.

Under title 15 of the Election Code, the campaign finance law, a person who accepts a political contribution as a candidate or officeholder may not convert the contribution to personal use. Elec. Code § 253.035(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.* § 253.035(d).

In considering whether a conversion to personal use occurred in the circumstances described in the request letter, it is important to bear in mind that title 15 does not require that political contributions be kept in an account separate from other funds or even that they be kept in an account at all.¹ Although a candidate or officeholder may keep a separate "political account" for his or her own bookkeeping purposes, nothing in title 15 would prevent the candidate or officeholder from moving money from such a "political account" into an account the candidate or officeholder normally used for nonpolitical purposes. Further, nothing in title 15 would prevent a candidate or officeholder from taking money from a "political account" and putting it into a drawer, wallet, or pocket. Neither kind of transfer would be an expenditure, and neither transfer would trigger any reporting requirement.

Because title 15 does not require that political contributions be segregated from other funds, it is not always easy to determine whether an expenditure was made "from political contributions." For example, a candidate might have cash in three different bank accounts as well as some cash in a box. If the candidate made both personal and political expenditures from all of the accounts and from the box, it would be difficult to demonstrate that the candidate had made personal expenditures from political contributions unless the total amount of money in the accounts and the box were less than the total amount of political contributions that the candidate should have on hand.² Our response to the request at hand assumes the existence of the two accounts described in the request letter and nothing more. We do not consider whether other money the officeholder might have would be relevant to the questions raised.

The questions raised in the request have to do with whether a conversion of political contributions to personal use occurred and, if so, what amount of political contributions was converted to personal use. At the outset, we assume the officeholder was not entitled to reimburse his personal funds \$800 from political contributions in

accordance with section 253.035(h) of the Election Code.³ If the officeholder had been entitled to do so, no conversion to personal use would have occurred in the situation described.

The first transaction in question is the transfer of \$800 from the "political account" to the "personal account." The transfer is not an "expenditure" for purposes of title 15. It is not reportable, and it is not a conversion to personal use. Similarly, the withdrawal of cash is, by itself, neither a reportable event nor a conversion to personal use. Expenditures from the cash for personal purposes would, however, amount to conversions of political contributions to personal use.⁴ Also, checks written on the account for personal purposes would amount to conversions of political contributions to personal use.⁵

The requestor also asks whether the officeholder's eventual repayment of \$800 from personal funds into his "political account" is relevant to a determination of whether personal use occurred. Repayment after a conversion of political contributions to personal funds does not "undo" the conversion. The fact of repayment and the speed of repayment might, of course, affect whether there would be an attempt to seek to hold a candidate or officeholder civilly liable under section 253.035(f) of the Election Code. It might also affect the resolution of a sworn complaint filed with the Ethics Commission alleging conversion of political contributions to personal use.

The final question has to do with section 253.035(f) of the Election Code, which provides as follows:

A person who converts a political contribution to his personal use in violation of this section is civilly liable to the state for an amount equal to the amount of the converted contribution plus reasonable court costs.

The requestor asks how much the officeholder should "tender to the state" under this provision. We understand the question to be whether a person may admit a conversion of political contributions to personal use and pay any potential liability even though no suit has been filed. The statute does not contemplate or authorize payment under 253.035(f) in the absence of a demand by the state.

SUMMARY

Title 15 of the Election Code does not require that political contributions be kept in an account separate from other funds, or even that political contributions be kept in an account at all. If a candidate or officeholder maintains more than one account, a transfer of political contributions from one of those accounts to another is not an expenditure; nor does the transfer trigger any reporting requirements. Similarly, the withdrawal of cash from one of those accounts is not, by itself, an expenditure; nor does the withdrawal itself trigger any reporting requirements.

¹ The only provision in title 15 that deals with accounts is one that provides that a candidate or officeholder may not maintain officeholder contributions in an account separate from campaign contributions. Elec. Code § 253.040. This simply means that if a candidate or officeholder puts officeholder contributions into an account, that account must also contain campaign contributions. *See generally id.* § 251.001(3), (4), (5) (defining "campaign contribution," "officeholder contribution," and "political contribution").

² The amount the candidate "should have on hand" would be the total amount of political contributions received minus any legitimate expenditures from personal funds.

³ The candidate or officeholder may reimburse his personal funds from political contributions for campaign or officeholder expenditures made from personal funds if the candidate or officeholder complies with the reporting requirements set out in section 253.035(h).

⁴ The request letter states that the "personal account" had \$21.20 in addition to the \$800 transferred from the "political account." Therefore, the first \$21.20 in personal expenditures from the account would not involve a conversion of political contributions to personal use.

⁵ *See supra* note 3.