



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 332

July 12, 1996

Whether contributions collected by an officeholder's son for a retirement party for the officeholder are "officeholder contributions" to the officeholder. (AOR-369)

The Texas Ethics Commission has been asked whether contributions collected by an officeholder's son for a retirement party for the officeholder are "officeholder contributions" to the officeholder. Title 15 of the Election Code regulates political contributions and expenditures to candidates for elective offices and holders of elective offices. There are two types of political contributions: campaign contributions and officeholder contributions. Elec. Code § 251.001(5). An officeholder contribution is

a contribution to an officeholder or political committee that is offered or given with the intent that it be used to defray expenses that:

- (A) are incurred by the officeholder in performing a duty or engaging in an activity in connection with the office; and
- (B) are not reimbursable with public money.

Id. § 251.001(4). A retirement party for an officeholder is an activity in connection with the office. Whether contributions for such a party are "officeholder contributions" depends on two other issues: 1) whether the contributions are made "to an officeholder or political committee"; and 2) whether the contributions are intended to defray expenses "incurred by the officeholder."

The contributions for the party are contributions "to the officeholder" for purposes of title 15 if the officeholder approves of or consents to the contributions.¹ See generally *id.* § 251.001(2); 1 T.A.C. § 20.1 (defining "direct campaign expenditure"); [Ethics Advisory Opinion No. 331](#) (1996).

A more difficult question is whether the contributions are intended to defray expenses "incurred by the officeholder." The Texas Ethics Commission has never considered the meaning of the phrase "incurred by the officeholder" for purpose of section 251.001(4)(A).² The phrase would be superfluous if it required nothing more than that the officeholder approve of or consent to the expenditures since, as we pointed out above, approval or consent is necessary for the contributions to be contributions "to the officeholder." We conclude, therefore, that the phrase "incurred by the officeholder" requires, in this context, that the officeholder play a decision-making role in regard to the party.

The requestor asks whether expenditures for a party are "incurred by the officeholder" if the individuals planning the party ask the officeholder to provide a list of persons who contributed to the officeholder's campaign to be used as the basis for a guest list. An officeholder who does nothing more than respond to a request for a list is not playing a decision-making role in regard to the party. Therefore, a response to a request for a list does not, by itself, mean that expenditures for the party are expenditures "incurred by the officeholder." If the officeholder participates in a decision about the contents of the guest list for the party, however, the expenditures for the party are expenditures "incurred by the officeholder." Whether any particular expenditure is "incurred by an officeholder" for purposes of title 15 is a fact question.

SUMMARY

Contributions collected by an officeholder's son for a retirement party for the officeholder are "officeholder contributions" subject to title 15 of the Election Code if the officeholder plays a decision-making role in regard to the party.

¹ Depending on whether the contributions in question are "officeholder contributions," the officeholder's son and the person from whom the son collects the contributions may constitute a specific-purpose political committee for the purpose of supporting an officeholder. See Elec. Code § 251.001(12), (13); [Ethics Advisory Opinion No. 320](#) (1996) (person soliciting campaign contributions and persons making campaign contributions would constitute political committee in circumstances described).

² There is no counterpart to the phrase "incurred by the officeholder" in the definition of "campaign contribution." See Elec. Code § 251.001(3).