



# TEXAS ETHICS COMMISSION



## ETHICS ADVISORY OPINION NO. 360

*February 14, 1997*

*Clarification of Ethics Advisory Opinion No. 329 concerning the contribution of legal services rendered in connection with a lawsuit brought under Election Code section 253.131. (AOR-397)*

The Texas Ethics Commission has been asked to clarify certain aspects of [Ethics Advisory Opinion No. 329](#) (1996). In that opinion, we stated that lawyers who provide free legal services to an individual who brings a lawsuit under Election Code section 253.131 make a political contribution, but that the contribution is not reportable since the contribution of an individual's personal service is not required to be reported. *See* Elec. Code § 254.033. The question raised here is whether incidental expenditures that lawyers made in connection with bringing a lawsuit under section 253.131 or defending against a counterclaim in such a lawsuit are reportable as contributions to the candidate. The request letter lists expenditures for purposes such as copying, depositions, transcripts, mediation fees, and postage as examples of the kinds of incidental expenditures paid by attorneys.

In [Ethics Advisory Opinion No. 329](#), at 2, we stated that "an offer of free legal services for the purpose of pursuing a lawsuit under section 253.131 is a contribution given with the intent that it be used in connection with a campaign." A contribution of *personal* services is not reportable because Election Code section 254.033 specifically excepts contributions of personal services from the reporting requirements. The Election Code does not, however, except from the reporting requirements contributions in the form of payment of expenditures made in connection with rendering personal services. Therefore, such payments are reportable.

The request letter states that the attorneys in the lawsuit in question were awarded fees as damages under Election Code section 253.131 and that the incidental expenditures were covered by that award. The fact that the incidental expenditures were covered by the award in the lawsuit does not change the fact that they were initially donated to the individual bringing the suit. Indeed the fact that the attorneys ultimately received attorney's fees raises a question about whether the personal services themselves should be reported. Section 254.033 of the Election Code provides: "A political contribution consisting of an individual's personal service is not required to be reported under this chapter *if the individual receives no compensation for the service.*" (Emphasis added.) This means, for example, that if a lawyer directs a paid assistant to provide services to a candidate or officeholder, the personal services are reportable as a contribution from the lawyer because the assistant is receiving compensation for the work time from the lawyer. The situation at hand, however, is different. In this case the lawyers provided personal services to a client knowing that the client would not pay them but that they might ultimately be entitled to recover fees from the defendant. *See* Elec. Code §§ 251.001(2) ("contribution" includes a loan other than a loan from certain financial institutions), 253.131(d)(2) (damages in a lawsuit under 253.131 include reasonable attorney's fees incurred in the suit). Unlike the situation in which a lawyer contributes the services of a paid assistant, however, the compensation to the lawyers would not be paid by someone who had the intent of assisting or supporting the individual who brought the suit. On the contrary, the compensation would come from the defendant, someone almost certainly antipathetic to the individual who brought the suit. In that case, the payment to the lawyers would not constitute a political contribution because a political contribution is a contribution made with the intent that it be used in connection with a campaign or to assist an officeholder. Consequently, the fact that a lawyer ultimately receives compensation under section 253.131 of the Election Code does not mean that the lawyers' initial contribution of personal services becomes a reportable contribution from the defendant.

The requestor also asks about the procedure for filing a corrected report to report previously unreported contributions and the effect of filing a corrected report. Texas Ethics Commission rules provide that a candidate may correct a previously filed report after discovering that the original report was not accurate. 1 T.A.C. §§ 18.41, 18.43. In general, a report filed by the deadline is nonetheless considered late if it was not accurate when filed. *Id.* § 18.61(b)(2). Such a report (other than a report due eight days before an election) will not be considered late, however, if the filer corrects the report and files a "Good Faith Affidavit" attesting that the error on the original report was made in good faith and was corrected promptly after the filer learned of the mistake.<sup>1</sup> *Id.* §§ 18.49, 18.61, 18.83(a), (c).

### SUMMARY

A contribution of *personal* services to a candidate or officeholder is not reportable because Election Code section 254.033 specifically excepts contributions of personal services from the reporting requirements. The Election Code does not, however, except from the reporting requirements contributions in the form of payment of expenditures made in connection with rendering personal services. Therefore, such payments are reportable.

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<sup>1</sup> Candidates and officeholders who file with the Ethics Commission are subject to automatic penalties for late filings. Elec. Code § 254.042. Candidates and officeholders who file a corrected report and a Good Faith Affidavit to correct good-faith errors on reports (other than reports due eight days before an election) do not incur a late penalty. 1 T.A.C. § § 18.41 (corrected report), 18.49 (good faith affidavit), 18.61 (late report), 18.83 (no fine for certain corrected reports).