



# TEXAS ETHICS COMMISSION



## ETHICS ADVISORY OPINION NO. 363

*March 14, 1997*

*Whether contributions to a legal defense fund for a member of the legislature are political contributions for purposes of title 15 of the Election Code and whether the member of the legislature may use political contributions to pay expenses in connection with a particular lawsuit. (AOR-400)*

The Texas Ethics Commission has been asked to consider whether a member of the legislature may accept contributions to a legal defense fund. The purpose of the fund is to cover expenses the legislator incurs in defending two lawsuits that have been filed against the legislator. One of the suits is a disciplinary action brought by a professional licensing board alleging that the legislator violated rules of professional conduct. The other is a civil suit alleging fraud and violation of the Deceptive Trade Practices Act.

The first question is whether a contribution to the legislator for a legal defense fund would be an officeholder contribution. An officeholder contribution is a contribution to an officeholder or political committee that is offered or given with the intent that it be used by the officeholder to defray expenses that are not reimbursable with public money and that are incurred by the officeholder in performing a duty or engaging in an activity in connection with the office. Elec. Code § 251.001(4). In other words, a contribution to the legal defense fund in question would be an officeholder contribution only if the legislator incurred the expenses "in performing a duty or engaging in an activity in connection with the office." The expenses to be defrayed in this instance would be the expenses of defending two lawsuits, both of which allege misconduct by the legislator in a private professional capacity, not in his capacity as a legislator. One fact alleged in each lawsuit, however, is that the legislator suggested that his status as a legislator enhanced his capabilities in his private professional practice. That fact alone does not, in our view, mean the expenses of defending the lawsuits are expenses incurred "in performing a duty or engaging in an activity in connection with the office" of state legislator. The focus of the lawsuits is the legislator's conduct as a private professional, not his conduct as a member of the legislature. Therefore contributions to the legislator for a legal defense fund to cover the expenses of defending those lawsuits would not be an officeholder contribution.

A related question is whether the legislator may use political contributions already on hand to pay the expenses of defending the two lawsuits. Political contributions may not be converted to personal use. *Id.* § 253.035. "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). "Personal use" does not include the use of political contributions for defending a civil action brought against the person "in his status as a candidate or officeholder." Again, the lawsuits in question were brought against the legislator in his private professional status, not in his status as a legislator. Consequently, the legislator may not use political contributions on hand to pay the expenses of defending the two lawsuits in question. See [Ethics Advisory Opinion No. 276](#) (1995); see generally [Ethics Advisory Opinion Nos. 334, 310](#) (1996), [270](#) (1995), [219](#) (1994), [105](#) (1992).

The last question raised is whether the legislator may accept free legal services in connection with the two lawsuits. The Penal Code prohibits a member of the legislature from soliciting or accepting a "benefit" from any person. Penal Code § 36.08(f). A "benefit" is "anything reasonably regarded as pecuniary gain or advantage." *Id.* § 36.01(3). The provision of legal services at no charge would be a benefit. Therefore, the legislator may accept the free provision of legal services in this case only if one of the exceptions to the general prohibition against

benefits is applicable. Those exceptions are set out in Penal Code section 36.10. The one exception that might apply in this case is the exception for "a gift, or other benefit conferred on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient." *Id.* § 36.10(a)(2). The questions of whether a legislator has a relationship with a person that is independent of the legislator's official status and whether a benefit is occurred on account of that status are fact questions.<sup>1</sup>

### SUMMARY

Contributions to a legislator for a legal defense fund to cover the expenses of defending two lawsuits brought against the legislator in a private professional capacity would not be officeholder contributions. Further, the legislator may not use political contributions on hand to pay the expenses of defending the two lawsuits in question.

The provision of legal services at no charge would be a "benefit" for purposes of chapter 36 of the Penal Code.

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<sup>1</sup> Contributions to a legal defense fund would also be benefits. Any particular contribution would be permissible only if one of the exceptions in section 36.10 were applicable.