



# TEXAS ETHICS COMMISSION



## ETHICS ADVISORY OPINION NO. 375

*September 12, 1997*

*Whether a candidate or officeholder may reimburse himself with interest for political expenditures made from personal funds. (AOR-412)*

The Texas Ethics Commission has been asked to consider whether a candidate or officeholder may reimburse himself with interest for political expenditures made from personal funds.

Title 15 of the Election Code generally requires that candidates and officeholders report political expenditures from personal funds.<sup>1</sup> Elec. Code § 254.031(a)(3). *But see id.* § 254.092 (officeholder is not required to report officeholder expenditures from personal funds unless officeholder intends to seek reimbursement from political contributions). Political expenditures from personal funds may be reported either on the schedule for "loans" or on the schedule for "political expenditures from personal funds." *Id.* §§ 253.035(h), .0351. Title 15 expressly permits candidates and officeholders to reimburse themselves for political expenditures from personal funds, as long as the expenditures are properly reported. *Id.*; *see also id.* § 253.042 (placing cap on total amount of political contributions candidates for and holders of statewide office may use to reimburse themselves).

The question raised here is whether candidates or officeholders may reimburse themselves *with interest* from political contributions for money they "loaned" to themselves for political expenditures.<sup>2</sup> In 1984 the State Ethics Advisory Commission<sup>3</sup> issued an opinion stating that candidates' or officeholders' use of political contributions to pay interest to themselves for political expenditures from personal funds would be an impermissible personal use of political contributions. [State Ethics Advisory Opinion No. 84-27](#) (1984). In 1991, however, the legislature added Election Code section 253.042, which indicated a legislative view that title 15 allows candidates and officeholders to use political contributions to reimburse themselves with interest for political expenditures from personal funds. Acts 1991, 72nd Leg., ch. 304, § 5.07, at 1326. Section 253.042 places a cap on the amount of political contributions statewide candidates and officeholders may use to reimburse themselves. In clarifying that the cap applies to the total amount a candidate or officeholder pays himself or herself from political contributions, the legislature stated that the provision does not prohibit "the payment of interest on loans covered by this section at a commercially reasonable rate" but that interest was included in the cap set out in section 253.042. Elec. Code § 253.042(e). We think that language evidences a legislative view that title 15 does not prohibit candidates and officeholders from using political contributions to pay interest at a commercially reasonable rate on "loans" to themselves for candidate and officeholder purposes.<sup>4</sup> We conclude, therefore, that a candidate or officeholder may use political contributions to reimburse himself or herself with interest at a commercially reasonable rate for political expenditures made from the candidate's or officeholder's personal funds.<sup>5</sup>

Because a candidate or officeholder may pay himself or herself reimbursement for political expenditures from personal funds only if the candidate or officeholder properly discloses the intent to do so, it follows that a candidate or officeholder may use political contributions to reimburse himself or herself with interest only if the candidate or officeholder properly discloses the intent to pay himself or herself interest at a particular rate. *Id.* §§ 253.035(h), .0351. As a practical matter, this means that a candidate or officeholder must report the political expenditures on Schedule E (for loans) and indicate the applicable rate of interest.

**SUMMARY**

A candidate or officeholder may use political contributions to pay interest to himself or herself at a commercially reasonable rate in connection with political expenditures made from the candidate's or officeholder's personal funds if the candidate or officeholder properly reports the political expenditures from personal funds and indicates on the report that he or she intends to pay reimbursement with interest. The report must also set out the rate at which the candidate or officeholder will pay himself or herself interest.

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<sup>1</sup> Campaign contributions and officeholder contributions are referred to collectively as "political contributions." Elec. Code § 251.001(5). Similarly, campaign expenditures and officeholder expenditures are referred to collectively as "political expenditures." Id. § 251.001(10).

<sup>2</sup> Strictly speaking, a candidate or officeholder does not make a "loan" to himself when he makes political expenditures from personal funds. See [Ethics Advisory Opinion Nos. 349](#) (1996); [258](#) (1995). Filers often refer to political expenditures from personal funds as "loans," however, and since 1995 title 15 has expressly allowed filers to report political expenditures from personal funds as "loans." Acts 1995, 74th Leg., ch. 996, § 8 (adding Elec. Code § 253.0351).

<sup>3</sup> The State Ethics Advisory Commission ("SEAC"), created by the legislature in 1983, was authorized to issue advisory opinions about the campaign finance laws, among other subjects. Acts 1983, 68th Leg., ch. 444, sec. 11, § 9, at 2608-10, repealed by Acts 1991, 72nd Leg., ch. 304, § 1.38, at 1303. The State Ethics Advisory Commission was abolished by act of the 72nd Legislature, and all its obligations, records, personnel, programs and contracts were transferred to the Texas Ethics Commission. Acts 1991, 72nd Leg., ch. 304, § 1.38, at 1303.

<sup>4</sup> Although section 253.042 itself applies only to statewide candidates and officeholders, we interpret the language in subsection (e) as demonstrating the legislature's understanding of the general rule regarding candidates' and officeholders' use of political contributions to pay themselves interest.

<sup>5</sup> Because the opinion request is about the use of political contributions by a judicial candidate or officeholder, Election Code section 253.162 is also relevant. That provision places a cap on the total amount a judicial candidate may reimburse himself or herself from political contributions. The caps on reimbursement set out in Election Code section 253.162 are the total amounts judicial candidates and officeholders may pay themselves to compensate themselves for political expenditures made from personal funds. Any interest paid is included in determining whether a candidate or officeholder has reached the applicable cap.