



# TEXAS ETHICS COMMISSION



## ETHICS ADVISORY OPINION NO. 407

*October 9, 1998*

*Whether a legislator may use political contributions to rent a tuxedo for the legislative gala on the eve of the first day of a regular legislative session or for a nonprofit charity function. (AOR-448)*

The Texas Ethics Commission has been asked to consider whether a legislator may use political contributions to rent a tuxedo for the legislative gala on the eve of the first day of a regular legislative session or for a nonprofit charity function.

A candidate or officeholder may not convert political contributions to personal use. Elec. Code § 253.035(a); *see also id.* § 251.001(5) (the term "political contribution" includes both campaign contributions and officeholder contributions). "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 a 1992 opinion, we discussed whether an officeholder could use political contributions to pay various clothing expenses. [Ethics Advisory Opinion No. 104](#) (1992). In that opinion, we looked to a federal tax law standard that allowed clothing expenses to be deducted as a business expense if (1) the clothing is of a type specifically required as a condition of employment, (2) it is not adaptable to general usage as ordinary clothing, and (3) it is not so worn. *Id.* at 2. We stated that the same standard would apply in determining whether an officeholder could use political contributions to pay clothing expenses. We note, however, that the first of those three conditions is by its terms inapplicable to a holder of a public office since an officeholder is not an "employee." *See* Attorney General Opinion M-484 (1969). Therefore, we modify the standard as follows: An officeholder may use political contributions to pay clothing expenses if the clothing (1) is of a type appropriate for the performance of duties or activities of the office held, (2) is not adaptable to general usage as ordinary clothing, and (3) is not so worn.<sup>1</sup>

In our opinion, the rental of a tuxedo for the legislative gala satisfies that standard. The legislative gala is in connection with legislative activities and apparently it is common practice for male legislators to wear tuxedos to the event. Further, a tuxedo, unlike a business suit, is for most people not adaptable to general usage as ordinary clothing. Finally, the fact that the legislator is renting the tuxedo indicates that this particular tuxedo will not be so worn. We conclude therefore that a legislator may use political contributions to rent a tuxedo for the legislative gala on the eve of the first day of a regular legislative session.

Similarly, a legislator may use political contributions to rent a tuxedo for attendance at a charity event as long as the legislator is attending the event as an activity of a public officeholder.<sup>2</sup> Whether a legislator is doing so depends on the facts of any particular case. For example, a legislator would, in our view, be attending such an event as an activity of his or her office if he or she had been asked to speak at the event or otherwise lend his or her renown to the event.

### SUMMARY

A legislator may use political contributions to rent a tuxedo for the legislative gala on the eve of the first day of a regular legislative session.

A legislator may use political contributions to rent a tuxedo for attendance at a nonprofit charity event if the legislator attends the event as an activity of a public officeholder.

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<sup>1</sup> Although the requestor focuses on his status as an officeholder, clothing expenses are permissible as campaign expenditures if the clothing (1) is used for campaign purposes, (2) is not adaptable to general usage as ordinary clothing, and (3) is not so worn.

<sup>2</sup> The question here is whether an officeholder may use political contributions to pay costs in connection with *attendance* at a charity event. We have previously stated that it is permissible to use political contributions to make a contribution to a recognized tax-exempt, charitable organization formed for educational, religious, or scientific purposes. [Ethics Advisory Opinion No. 47](#) (1992).