



# TEXAS ETHICS COMMISSION



## ETHICS ADVISORY OPINION NO. 478

*February 12, 2008*

*Whether an elected judge may use political contributions to pay the premiums of a Judge's Professional Liability Insurance Policy. (AOR – 541)*

The Texas Ethics Commission has been asked to consider whether an elected judicial officeholder may use political contributions to pay the premiums of a “judges’ claims made professional liability insurance policy.” At issue in this opinion is whether such a use of political contributions would constitute a conversion of political contributions to personal use.

Section 253.035 of the Election Code provides as follows:

- (a) A person who accepts a political contribution as a candidate or officeholder may not convert the contribution to personal use.
- (b) A specific-purpose committee that accepts a political contribution may not convert the contribution to the personal use of a candidate, officeholder, or former candidate or officeholder.
- (c) The prohibitions prescribed by Subsections (a) and (b) include the personal use of an asset purchased with the contribution and the personal use of any interest and other income earned on the contribution.

Election Code § 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 “payments made to defray ordinary and necessary expenses incurred in connection with activities as a candidate or in connection with the performance of duties or activities as a public officeholder.” *Id.*

In Ethics Advisory Opinion No. 433, we determined that it would not constitute a conversion to personal use for a county court judge to use surplus political contributions to defray expenses incurred in connection with the judge’s defense against charges of judicial misconduct brought by the Texas State Commission on Judicial Conduct. [Ethics Advisory Opinion No. 433](#) (2001). In another opinion, we stated that a district judge may use political contributions to pay the expenses of defending himself against a lawsuit that alleges malfeasance, provided that the lawsuit is filed against the judge in his status as an officeholder. [Ethics Advisory Opinion No. 276](#) (1995). We also emphasized that such a use of political contributions would not be permissible if the lawsuit were filed against the judge in his private professional capacity because such a suit would not be brought against the judge in his status as an officeholder. *Id.*

Addressing the question before us, we note that the state legislature has excluded from the definition of “personal use” a person’s use of political contributions for a defense against a criminal or civil action brought against the person in his status as an officeholder. Election Code § 253.035(i)(1). We believe that a payment of

a premium of such an insurance policy undertaken to ensure the availability of adequate monetary resources in the event that a criminal or civil action is brought against a person in his capacity as a public officeholder equates to a payment made for defending against a criminal or civil action. Furthermore, we believe that a judge's use of political contributions to insulate his liability from claims or lawsuits brought against him in his official capacity as a public officeholder by paying a premium of an insurance policy that only covers such claims or lawsuits would not primarily further individual or family purposes not connected with the performance of his duties or activities as a holder of a public office.

Therefore, provided that the insurance policy only covers expenses incurred in connection with claims or lawsuits brought against a judge in his official capacity as a public officeholder, the judge's use of political contributions to pay a premium of that policy would not constitute a personal use and would not violate Section 253.035 of the Election Code. We are aware, however, that payments made from an insurer pursuant to such an insurance policy may occur in numerous forms and by many methods, including, for example, payments made directly to the insured or to a legal representative of the insured for purposes of defending against a claim or lawsuit. Thus, we caution that any interest, proceeds, or other payments made to the judge through an insurance policy of which the premiums are paid in part or in whole with political contributions, are subject to the restrictions that apply to political contributions as provided by Title 15 of the Election Code. *See* Ethics Advisory Opinion No. 224 (1994). Furthermore, interest, proceeds, or other payments made to the officeholder through such a policy must be paid by the officeholder into the officeholder's political fund.<sup>1</sup> *See* [Ethics Advisory Opinion No. 204 \(1994\)](#).

### SUMMARY

The use of political contributions to pay a premium of a “judge's claims made professional liability insurance policy” that only covers expenses incurred in connection with claims or lawsuits brought against a judge in his official capacity as a public officeholder does not constitute a personal use.

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<sup>1</sup> Similarly, if an officeholder seeks and obtains reimbursement from other sources for expenses paid by the insurer, the money paid to the officeholder as reimbursement *must* be paid by the officeholder into the officeholder's political fund.