



# TEXAS ETHICS COMMISSION



## ETHICS ADVISORY OPINION NO. 480

*April 4, 2008*

*Whether an elected judge may use political contributions to compensate a court employee under the judge's supervision for lost vacation time and, if so, whether the judge may use personal funds for that purpose with the intent to seek reimbursement from political contributions. (AOR – 543)*

The Texas Ethics Commission has been asked to consider whether an elected judicial officeholder (judge) may use political contributions to compensate a court employee under the judge's supervision for lost vacation time, and if so, whether the judge may use personal funds for that purpose with the intent to seek reimbursement from political contributions. The requestor provides that the court employee was diligently carrying out his or her county responsibilities as directed by the judge on assignments connected with the activities of the judge's office and that the employee lost vacation time because the workload did not make taking time off at the rate desired by the county practical.

An issue in this opinion is whether the use of political contributions proposed by the requestor 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. 254, we determined that it would not constitute a conversion to personal use for a legislator to use political contributions to supplement employees' salaries, either by making contributions to the state to be used to offset part of the cost of the state's payment of certain employees' salaries or by paying the supplements directly to the employees. [Ethics Advisory Opinion No. 254](#) (1995). The payment at issue in the question before us would be made to compensate a judge's employee for carrying out his or her county responsibilities as directed by the judge on assignments connected with the activities of the judge's office in situations in which the county will not compensate the employee. Therefore, it would not constitute a conversion to personal use for the judge to use political contributions to make the payment at issue.

The next issue is whether the judge may use personal funds to make the payment and disclose it as a political expenditure made from personal funds with the intent to seek reimbursement from political contributions. Title 15 of the Election Code requires a candidate or officeholder to report political expenditures<sup>1</sup> from personal funds for which the candidate or officeholder will seek reimbursement from political contributions. Id. §§ 253.035(h) and 253.0351. Such expenditures are to be reported either as a loan on Schedule E of the C/OH (candidate/officeholder) reporting form or as “political expenditures from personal funds with the intent to seek reimbursement” on Schedule G of the form.<sup>2</sup> Id. An expenditure made by the judge to make the payment at issue constitutes an officeholder expenditure because it is an expenditure connected with the duties and activities of the judge’s office that is not reimbursable with public funds. Id. § 251.001(9). Accordingly, the judge may use personal funds to make the payment at issue and may seek reimbursement from political contributions provided that the expenditure from personal funds is reported as described above.<sup>3</sup>

The request letter also raises questions about the restrictions on gifts to public servants in Chapter 36 of the Penal Code. As a public servant, a court employee is subject to various Penal Code restrictions on the acceptance of “benefits.” Penal Code § 36.08; see id. § 1.07(a)(41) (defining “public servant”). A “benefit” is “anything reasonably regarded as pecuniary gain or pecuniary advantage.” Id. § 36.01(3). Payments of money are benefits. Id. We have said that a salary supplement paid by a legislator to state employees who work for the legislator is permissible under section 36.10(a)(2) of the Penal Code, which provides an exception based on an “independent relationship.” Ethics Advisory Opinion 254 (1995); See generally, Ethics Advisory Opinion Nos. 130 (1993) and 139 (1993). We conclude, therefore, that a court employee may accept the compensation at issue in this request under the “independent relationship” exception.

### SUMMARY

Title 15 of the Election Code does not prohibit an officeholder from using political contributions to compensate a county employee for vacation time that the employee was unable to take due to carrying out his or her county responsibilities on assignments connected with the activities of the officeholder’s office. The officeholder may use personal funds to make the payment to compensate the employee for the lost vacation time and may seek reimbursement from political contributions provided that the expenditure from personal funds is reported as required by title 15 of the Election Code.<sup>4</sup> The court employee may accept the compensation at issue under section 36.10(a)(2) of the Penal Code.

---

<sup>1</sup> Campaign expenditures and officeholder expenditures are referred to collectively as “political expenditures.” Id. § 251.001(10).

<sup>2</sup> When a candidate or officeholder pays himself reimbursement from political contributions for expenditures reported as a loan or reported on Schedule G, the candidate or officeholder must report the reimbursement on Schedule F as an “expenditure from political contributions.”

<sup>3</sup> If the judge is subject to the Judicial Campaign Fairness Act, the reimbursement at issue must be in compliance with the limits set by the Act. The Judicial Campaign Fairness Act applies to a political contribution or political expenditure in connection with the office of chief justice or justice of the Supreme Court; presiding judge or judge of the Court of Criminal Appeals; chief justice or justice of a court of appeals; district judge; judge of a statutory county court; or judge of a statutory probate court. Elec. Code § 253.151.

<sup>4</sup> If the judge is subject to the Judicial Campaign Fairness Act, the reimbursement at issue must be in compliance with the limits set by the Act.