



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 483

April 16, 2009

Whether an officeholder may use political contributions to contribute to a trust fund for the benefit of an individual for payment of that individual's medical and other supplemental needs. (AOR-546)

The Texas Ethics Commission has been asked to consider whether an officeholder may use political contributions to contribute to a trust fund established for the benefit of an individual for paying that individual's medical and other supplemental needs. According to the request letter for this advisory opinion, the individual is not a family member of the officeholder and has functioned as the campaign manager and/or fundraiser for a number of officeholders. The request letter also states that the individual had a stroke during open heart surgery and has medical expenses that exceed Medicare coverage, has no supplemental insurance, and will continue to need speech therapy and medical assistance in the future. The request letter also states that the individual is considered disabled in accordance with section 1614(a)(3) of the Federal Social Security Act and that the trust is not intended to replace income.

Under the facts before us, the individual for whom the trust fund has been established is a former campaign manager or fundraiser for officeholders. The fact that the individual is a former campaign manager or fundraiser for an officeholder does not by itself mean that a contribution under these circumstances would be made for a political purpose. Furthermore, the requestor does not provide any facts to indicate that a contribution to the trust fund would be made for a political purpose. Thus, we think that in this instance such a contribution would not be a political expenditure.¹ The next question is whether such a contribution would primarily further individual or family purposes of the officeholder.

In previous advisory opinions, we have stated that, generally, an expenditure of political contributions for one of the purposes set out in section 254.204(a) of the Election Code is not a personal use of political contributions under title 15. Ethics Advisory Opinion Nos. 47 (1992), 149 (1993). Section 254.204(a) states:

At the end of the six-year period prescribed by Section 254.203, the former officeholder or candidate shall remit any unexpended political contributions to one or more of the following:

- (1) the political party with which the person was affiliated when the person's name last appeared on a ballot;
- (2) a candidate or political committee;
- (3) the comptroller for deposit in the state treasury;
- (4) one or more persons from whom political contributions were received, in accordance with Subsection (d);

- (5) a recognized charitable organization formed for educational, religious, or scientific purposes that is exempt from taxation under Section 501(c)(3), Internal Revenue Code of 1986, and its subsequent amendments; or
- (6) a public or private postsecondary educational institution or an institution of higher education as defined by Section 61.003(8), Education Code, solely for the purpose of assisting or creating a scholarship program.

Elec. Code § 254.204(a).

In Ethics Advisory Opinion No. 47 (EAO 47), we considered whether a candidate may give surplus political contributions to a charity and stated that, by "setting out the exclusive list of expenditures that are permissible at the end of the six-year period, we think the legislature meant to identify certain expenditures that it did not consider to be personal ones even if they are not necessarily political expenditures." Ethics Advisory Opinion No. 47 (1992). This issue was reexamined in Ethics Advisory Opinion No. 149 (EAO 149), that addressed whether a candidate may use political contributions left over after a campaign to donate to a tax-exempt, nonprofit organization serving physically, mentally, and developmentally challenged individuals. EAO 149 held that the organization fit within the description of a charitable organization formed for educational purposes under section 254.204(a)(5) and that a contribution would be permissible under the facts stated in the opinion.² In 1997, after EAO 47 and EAO 149 were issued, the legislature narrowed section 254.204(a)(5) to apply only to a recognized charitable organization formed for educational, religious, or scientific purposes that is exempt from taxation as a 501(c)(3)³ organization. This is evidence of legislative intent that not every expenditure made from political contributions to charity is permissible.

In the facts before us, there is no indication that the trust fund is established as a recognized tax-exempt 501(c)(3) organization. Thus, a contribution to the trust fund would not be made for a purpose set out under section 254.204(a)(5) or any of the other purposes set out in section 254.204(a).

The critical issue in determining whether a use of political contributions is personal is the primary purpose for which such use occurs. There is no indication in the facts provided that the contributor or the contributor's family would receive a tangible benefit as a result of the contribution. However, we do not discount the personal intangible benefit, the satisfaction of seeing someone in need get the help they need, that a person receives from making a contribution to a friend or to another individual for purposes of assisting that individual with medical or other expenses unrelated to a campaign or public office. While a contribution in the circumstances described by the requestor may certainly be honorable and of great benefit to the ultimate recipient of the contribution, the decision to contribute to the trust fund for the benefit of the specific individual also serves a personal need of the contributor of seeing a specific person in need get the help they need. This is distinguishable from a situation in which a candidate or officeholder donates to a tax-exempt 501(c)(3) organization that fits into the purpose of section 254.204(a)(5) due, in part, to the absence of control that the contributor has over the disposition of the funds once they are held by the organization or over the selection of the beneficiaries of the funds. Under the circumstances described in this opinion, we think that the purpose of the proposed contribution primarily furthers the contributor's personal purposes and would therefore constitute a personal use of political contributions in violation of section 253.035(a) of the Election Code.

SUMMARY

Under the circumstances described in this opinion, an officeholder may not use political contributions to contribute to a trust fund established for the benefit of an individual for paying that individual's medical and other supplemental needs because such a use would constitute a personal use of political contributions in violation of section 253.035(a) of the Election Code.

¹ A political expenditure is defined in title 15 of the Election Code as a campaign expenditure or an officeholder expenditure. Elec. Code § 251.001(10). A campaign expenditure is an expenditure “made by any person in connection with a campaign for an elective office or on a measure.” Id. § 251.001(7). An officeholder expenditure is an expenditure made to defray expenses that are made by an officeholder “in performing a duty or engaging in an activity in connection with the office” and “are not reimbursable with public money.” Id. §251.001(9). An expenditure is “a payment of money or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a payment.” Id. § 251.001(6) (emphasis added).

² Implicitly, however, we recognized that a contribution to such an organization remains subject to analysis to determine whether the contribution would be a conversion to personal use. Such analysis may consider the potential benefit to the candidate or officeholder or his or her family, the position held with the organization by the candidate or officeholder, or the control that the candidate or officeholder has over the disposition of the funds held by such an organization.

³ At the time EAO 47 and EAO 149 were considered in 1992 and 1993, respectively, section 254.204(a)(5) provided the option of remitting contributions to “a recognized tax-exempt, charitable organization formed for educational, religious, or scientific purposes.”