



# TEXAS ETHICS COMMISSION



## ETHICS ADVISORY OPINION NO. 493

*October 21, 2010*

*Whether a person must maintain an active campaign treasurer appointment to receive a refund of a campaign expenditure made from personal funds or to make an expenditure to obtain the refund.  
(AOR-557)*

The Texas Ethics Commission has been asked whether a candidate for public office must maintain an active campaign treasurer appointment in certain circumstances. According to the facts stated in the request, the requestor was a candidate for a public office who used only his personal funds to make expenditures in connection with his campaign. The requestor states that a provider whom he paid for campaign services did not perform satisfactorily and he intends to seek a refund from the service provider, which may include spending additional personal funds. Furthermore, he states that he does not intend to seek a refund in excess of the amounts spent. The requestor asks whether he may file a “final” campaign finance report to terminate his campaign treasurer appointment and continue to seek a refund from the service provider.

Title 15 of the Election Code requires a candidate for public office to file campaign finance reports. Elec. Code § 254.063. *See generally*, chapter 254, Elec. Code. If a candidate expects no reportable activity in connection with the candidacy to occur after the period covered by a report, the candidate may designate the report as a final report, which would terminate the candidate’s campaign treasurer appointment. *Id.* § 254.06.<sup>1</sup> However, a candidate may not knowingly make or authorize a campaign expenditure or accept a campaign contribution at a time when a campaign treasurer appointment for the candidate is not in effect. *Id.* § 253.031(a). In other words, a candidate may not make campaign expenditures or accept campaign contributions after filing a final report unless a new campaign treasurer appointment is properly filed.

A campaign expenditure is defined as “an expenditure made by any person in connection with a campaign for an elective office or on a measure.” *Id.* § 251.001(7). Whether an expenditure is made before, during, or after an election does not affect its status as a campaign expenditure. *Id.* 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).

Addressing the requestor’s facts, an expenditure made by a person to obtain services related to the person’s campaign would be an expenditure made in connection with a campaign and, thus, a campaign expenditure. Similarly, an expenditure made to obtain a refund of funds previously paid for campaign services would also be an expenditure made in connection with a campaign, regardless of whether the expenditure occurs before, during, or after the election. Therefore, a person must maintain an active campaign treasurer appointment when making an expenditure to obtain a refund. The expenditure must also be disclosed in the campaign finance report covering the period in which the expenditure is made. A person is not required to maintain an active campaign treasurer appointment to receive a refund of personal funds used to make a campaign expenditure.<sup>2</sup>

### SUMMARY

An expenditure made by a person to obtain a refund of money previously paid by the person to a service provider in connection with the person’s campaign is a campaign expenditure. The person must therefore

maintain an active campaign treasurer appointment when the expenditure is made. A person is not required to maintain an active campaign treasurer appointment to receive a refund of personal funds used to make a campaign expenditure.

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<sup>1</sup> Section 254.065 of the Election Code states:

(a) If a candidate expects no reportable activity in connection with the candidacy to occur after the period covered by a report filed under this subchapter, the candidate may designate the report as a “final” report.

(b) The designation of a report as a final report:

(1) relieves the candidate of the duty to file additional reports under this subchapter, except as provided by Subsection (c); and

(2) terminates the candidate’s campaign treasurer appointment.

(c) If, after a candidate’s final report is filed, reportable activity with respect to the candidacy occurs, the candidate shall file the appropriate reports under this subchapter and is otherwise subject to the provisions of this title applicable to candidates. A report filed under this subsection may be designated as a final report.

Elec. Code § 254.065.

<sup>2</sup> We assume that, under these circumstances, the refund would not be made as a campaign contribution. *See* Elec. Code § 251.001(3).