



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 495

December 7, 2010

Whether a conclusion that an expense is “reimbursable with public money” for purposes of sections 251.001(4) and (9) of the Election Code requires that public funds be appropriated or otherwise available to cover the expense. (AOR-555)

The Texas Ethics Commission has been asked to consider the meaning of the phrase “reimbursable with public money” for purposes of Title 15 of the Election Code.

Section 251.001(4) of the Election Code states:

“Officeholder contribution” means a contribution to an officeholder or political committee that is offered or given with the intent that it be used to defray expenses that:

(A) are incurred by the officeholder in performing a duty or engaging in an activity in connection with the office; and

(B) *are not reimbursable with public money.*

Elec. Code § 251.001(4) (emphasis added).

Section 251.001(9) of the Election Code states:

“Officeholder expenditure” means an expenditure made by any person to defray expenses that:

(A) are incurred by an officeholder in performing a duty or engaging in an activity in connection with the office; and

(B) *are not reimbursable with public money.*

Id. § 251.001(9) (emphasis added).

This opinion concerns the definitions of “officeholder contribution” and “officeholder expenditure” in the context of expenses for transportation, meals, and lodging incurred by a judge in performing his or her extra-judicial duties, including participation in judicial education programs.¹ Specifically, the requestor asks whether the meaning of “reimbursable with public money” depends upon whether public money is actually appropriated or otherwise available to cover the expenses.

Although in previous advisory opinions we have considered whether certain actions constitute an officeholder contribution or officeholder expenditure, we have not considered the specific question before us in this request.

In accordance with standard rules of statutory construction, we must determine the legislature’s intent, which is primarily discerned from the plain meaning of the words in the statute.² The legislature has not provided a definition of either “reimbursable with public money” or “reimbursable” in the Election Code. As we noted in Ethics Advisory Opinion No. 460, there is no indication in the Election Code that the phrase “reimbursable with

public money” should be read to have some meaning other than the ordinary meaning. Accordingly, we must determine the meaning of these terms from their plain meaning. Ethics Advisory Opinion No. 460 (2005).³

A standard dictionary defines “reimbursable” as “that is to be reimbursed, repayable.” Compact Edition of the Oxford English Dictionary 385 (3rd ed. 1973). Black’s Law Dictionary does not define “reimbursable,” but defines “reimburse” to mean “to pay back, to make restoration, to repay that expended; to indemnify, or make whole.” Black’s Law Dictionary 891 (6th ed. 1991). The suffix “-able” means “capable of, fit for, or worthy of being so acted upon or toward.” Merriam-Webster’s Collegiate Dictionary 3 (10th ed. 1996).⁴

In our opinion, the term “reimbursable” means capable of being reimbursed or repaid. We think that the legislature intended that an expense be considered “reimbursable with public money” when a reimbursement from public funds would be lawful. Therefore, in the context of Title 15 of the Election Code, we think that an expense incurred by an officeholder is reimbursable with public money if the respective governmental body has the authority to reimburse the officeholder for the expense and, at the time the expense is incurred, allows the reimbursement of the particular category of expense, such as continuing legal education.

Whether a particular governmental body has the authority to make an expense depends upon the laws applicable to that body and the specific facts surrounding the expense. Specific fact questions cannot be resolved in an advisory opinion.⁵ Furthermore, in our opinion, “reimbursable with public funds” does not require the governmental body to actually reimburse the expense or to have funds available for such reimbursement at the time the expense is incurred.

SUMMARY

For purposes of sections 251.001(4) and 251.001(9) of the Election Code, the phrase “reimbursable with public money” means the governmental body has the authority to reimburse an officeholder for an expense and, at the time the expense is incurred, allows the reimbursement of the particular category of expense, such as continuing legal education. The phrase does not require the governmental body to actually reimburse the expense or to have funds available for such reimbursement at the time the expense is incurred.

¹ Under Title 15 of the Election Code, an “officeholder” is a person who holds an elective public office or the secretary of state. Thus, our interpretation of the terms “officeholder contribution” and “officeholder expenditure” applies to nonjudicial officeholders as well as judicial officeholders.

² *State v. Shumake*, 199 S.W.3d 279, 284 (Tex. 2006).

³ Gov’t Code § 311.011(a) (providing that words and phrases shall be read in context and construed according to the rules of grammar and common usage).

⁴ Texas courts may rely on definitions listed in commonly used dictionaries to discern the plain meaning of terms in a statute. *CenterPoint Energy Entex v. R.R. Comm’n of Tex.* 208 S.W.3d 608, 619 (Tex. App.—Austin 2006, pet. dism’d).

⁵ See, e.g., Tex. Att’y Gen. Op. Nos. GA-0475 (2006) (providing that whether a particular expenditure is authorized depends on two factors: (1) whether the expenditure is related to the official business of the office, and (2) whether any constitutional or statutory provisions prohibit the expenditure); JC-0212 (2000) (stating that whether certain municipality expenses are appropriate is a fact question); JC-0080 (1999) (stating that whether a proposed county expenditure will serve a public purpose is for county commissioners court to determine, subject to review by an appropriate court); See also, Gov’t Code § 660.003 (providing when a state agency may pay or reimburse a travel expense).