



# TEXAS ETHICS COMMISSION



## ETHICS ADVISORY OPINION NO. 498

*April 21, 2011*

*Whether a person who is a former candidate for and former holder of a judicial office may use political contributions to defray expenses incurred in connection with a defamation lawsuit filed by the person against an individual and a political committee in response to statements made in opposition to the person's performance as an officeholder. (AOR-561)*

The Texas Ethics Commission has been asked whether a person who is a former candidate for and former holder of a judicial office may use his political contributions to pay legal expenses for a civil lawsuit that he filed against an individual and a political committee for defamation related to his conduct and status as an officeholder. The requestor of the opinion was a judicial officeholder seeking reelection in the 2010 primary election. The requestor states that the individual and the political committee supported the requestor's opponent in the election and published statements regarding opinions that the requestor had written or with which he had concurred in his capacity as a judicial officeholder. After the election, the requestor filed a lawsuit in state district court against the individual and the political committee alleging that the statements were defamatory against the requestor in his official capacity as a judicial officeholder. The requestor asks whether the use of political contributions to pay expenses related to the lawsuit would constitute a conversion of political contributions to personal use.

Section 253.035 of the Election Code prohibits a person who accepts a political contribution as a candidate or officeholder from converting the contribution to personal use. Elec. Code § 253.035(a). "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 the use of contributions for defending a criminal action or prosecuting or defending a civil action brought by or against the person in the person's status as a candidate or officeholder. *Id.* § 253.035(i)(1).

We have issued several advisory opinions determining that a person's use of political contributions to pay for legal expenses incurred in defending against certain actions or lawsuits would not constitute a conversion of political contributions to personal use. See, e.g., [Ethics Advisory Opinion Nos. 433](#) (2001) (statutory court judge may use surplus contributions to defend against charges of judicial misconduct); [310](#) (1996) (officeholder may use contributions for legal expenses in connection with federal and state investigations of the officeholder for public corruption); [276](#) (1995) (district judge may use contributions to defend against lawsuit filed solely because of status as judge); [222](#) (1994) (individual may use contributions to respond to grievance filed before the state bar if the grievance is in regard to conduct as a candidate); and [219](#) (1994) (individual may use contributions to defend against sworn complaint brought against the individual as a candidate). In Ethics Advisory Opinion No. 105, we also determined that a candidate may use campaign contributions to pay legal expenses incurred in defending a collection suit brought by the holder of a note signed by the candidate in consideration for a campaign loan. [Ethics Advisory Opinion No. 105](#) (1992).

Based on the facts in the opinion request, the statements made by the defendants in the defamation lawsuit stemmed from their opposition to the requestor as an incumbent candidate for a judicial office. Thus, in our opinion the requestor's legal expenses incurred in bringing the defamation lawsuit would arise directly from his activities as a candidate. Therefore, the requestor's use of political contributions to pay such legal expenses

would not constitute a conversion of contributions to personal use under section 253.035 of the Election Code.

We note, however, that if political contributions are used, any proceeds from the lawsuit, including awards, damages, settlements, or other payments to the requestor, are subject to the restrictions that apply to political contributions as provided by Title 15 of the Election Code and must be paid by the person into his political fund. See [Ethics Advisory Opinion Nos. 478](#) (2008), [224](#) (1994), and [204](#) (1994).

### **SUMMARY**

The use of political contributions by a former candidate for and former holder of a judicial office to pay legal expenses he incurred in connection with a defamation lawsuit he brought in his status as a candidate would not constitute a conversion of contributions to personal use under section 253.035 of the Election Code.