



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 499

August 11, 2011

Whether all proceeds from a lawsuit for which a person defrays expenses by using both political contributions and personal funds, are subject to the personal use restriction. (AOR-562)

The requestor of [Ethics Advisory Opinion No. 498](#) (EAO 498) has asked the Texas Ethics Commission to consider whether all proceeds from a lawsuit for which he defrays expenses by using both political contributions and personal funds are subject to the personal use restriction. In EAO 498, we addressed whether 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. [Ethics Advisory Opinion No. 498](#) (2011). We concluded that, based on the facts provided by the requestor, the use of political contributions to pay such legal expenses would not constitute a conversion of contributions to personal use in violation of section 253.035 of the Election Code. *Id.* We noted that if political contributions were 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. *Id.*

The requestor now states that he intends to use both political contributions and personal funds to pay the legal expenses in connection with the lawsuit and asks whether under such circumstances the entire amount of the proceeds would be subject to the personal use restriction. 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). Section 253.035(c) of the Election Code provides that the prohibition on converting political contributions to personal use “include[s] the personal use of an asset purchased with the contribution and the personal use of any interest and other income earned on the contribution.” Elec. Code § 253.035(c). Based on that provision, previous advisory opinions have addressed the requirement to reimburse political contributions and required proceeds from political contributions to be paid into political funds. See [Ethics Advisory Opinion No. 478](#) (2008) (determining that any interest, proceeds, or other payments made to a judicial officeholder through a judges’ professional liability insurance policy must be paid by the officeholder into the officeholder’s political fund); [Ethics Advisory Opinion No. 224](#) (1994) (holding that financial gain from capital appreciation or dividends resulting from purchasing stock with political contributions is subject to the prohibition against conversion to personal use). Additionally, we have stated that if a member of the legislature uses political contributions to pay *a part* of the purchase price of an asset, a proportional amount of any income from the asset is subject to the prohibition on personal use. [Ethics Advisory Opinion No. 248](#) (1995) (emphasis in original)¹.

In the request before us, the requestor intends to use both political contributions and personal funds to pay for legal expenses as a plaintiff in a lawsuit that may result in awards, damages, or settlements paid to the requestor. As exemplified by section 253.035(c) of the Election Code, title 15 of the Election Code is intended to prohibit a person from using political contributions for personal gain by subjecting proceeds from political contributions to the personal use prohibition. In our opinion, this prohibition extends to awards, damages, or judgments that result from the use of political contributions. If the requestor uses political contributions to pay a portion of the

legal expenses for the lawsuit, the amount of proceeds subject to the prohibition on personal use is proportional to the amount of legal expenses paid with political contributions.² Thus, with respect to any proceeds from the lawsuit, the requestor is only required to pay into the requestor's political fund an amount that is proportional to the amount of legal expenses that are paid with political contributions.

SUMMARY

If a person who is a former candidate for and former holder of a judicial office uses political contributions to pay a portion of the legal expenses for a defamation lawsuit described in this opinion, the amount of proceeds subject to the prohibition on personal use is proportional to the amount of legal expenses paid with political contributions. With respect to any proceeds from the lawsuit, the amount that is proportional to the amount of legal expenses that are paid with political contributions must be paid into the person's political fund.

¹ We further noted that if an asset is purchased in part with political contributions, the personal use restrictions apply proportionately. *Id.* at n.1.

² For purposes of this opinion, we assume that the requestor is not using political contributions to reimburse himself for lawsuit expenses he made out of personal funds.