



# TEXAS ETHICS COMMISSION



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## ETHICS ADVISORY OPINION NO. 555

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*June 19, 2020*

### ISSUE

*Whether a judge may use political contributions to pay for equipment and services in connection with producing an educational podcast for practicing lawyers. (AOR-633)*

### SUMMARY

A judge may use political contributions to pay ordinary and necessary expenses incurred in connection with producing an educational podcast for practicing lawyers.

### FACTS

The requestor is a judicial officer who wants to produce a podcast. The requestor asks us to assume that the podcast would be “an educational podcast, geared towards helping lawyers who regularly practice in courts, and informing them of recent developments in the courts.”

To create the podcast, the requestor states that he would need to pay for certain equipment and services, including audio equipment for recording the podcast and a service for hosting the podcast on the Internet. In his request, the requestor identifies specific equipment, including brand and model information, and states that he has “thoroughly reviewed the subject, consulted with several podcasters and found” that equipment would be appropriate for starting “a small scale podcast.” The requestor asks whether he may use campaign funds to pay for that equipment and those services.

### ANALYSIS

Title 15 of the Texas Election Code prohibits candidates and officeholders from converting political contributions to personal use. Tex. Elec. Code § 253.035(a). “Personal use” is defined as “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 “payments made to defray ordinary and necessary

expenses incurred in connection with activities as a candidate or in connection with the performance of duties or activities as a public officeholder.” *Id.* § 253.035(d)(1).

In a previous opinion, we stated that it would not be a personal use for a judicial officeholder to use political contributions to pay ordinary and necessary travel expenses to teach at a legal conference. Tex. Ethics Comm’n Op. No. 536 (2016). That opinion rested on the particular facts presented to us, including that the conference was intended to assist and educate attorneys on issues concerning the law. *Id.* Given those facts, we stated that a judge’s attendance to teach at such a conference would be connected to the judge’s performance of official duties or activities, and thus a judge may use political contributions to “defray ordinary and necessary expenses incurred” in connection with that attendance. *Id.* (citing Tex. Elec. Code § 253.035(d)(1)).

More broadly, several of our prior opinions discuss judges using political contributions to *receive* education. Most recently, we opined that a judge may use political contributions to pay for membership in an organization that provides leadership training if the primary purpose in paying the costs is to facilitate the duties or activities of the judicial office. Tex. Ethics Comm’n Op. No. 546 (2018); *see also* Tex. Ethics Comm’n Op. Nos. 291 (1995) (a former judge sitting by assignment may use political contributions for continuing legal education courses), 279 (1995) (a senior judge may use political contributions for continuing legal education courses); 267 (1995) (a judge may use political contributions to attend a legal seminar); 247 (1995) (a judge may use political contributions to pay a person to assist the judge in preparation of a thesis required for a Masters of Law in the Judicial Process).<sup>1</sup>

In each of these cases, the judge received an incidental personal benefit from the expenditure. But the Commission has recognized that “by specifying that the use must not *primarily* serve individual or family purposes, the legislature has indicated that a use is not a prohibited personal use merely because it may have some incidental benefits to the individual candidate.” Tex. Ethics Comm’n Op. No. 547 (2018) (quoting Tex. Ethics Comm’n Op. No. 149 (1993)) (emphasis in original). An expenditure is not an impermissible personal use unless it “*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.” Tex. Elec. Code § 253.035(d) (emphasis added).

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<sup>1</sup> These opinions are distinguishable from Texas Ethics Commission Opinion Number 432 (2001), which states that a mayor may not use political contributions to pay professional license dues unless the license is *required* for the office held or sought. *Id.*; *cf.* Tex. Ethics Comm’n Op. No. 245 (1995) (a judge can use political contributions to pay state bar dues because a license to practice law is a requirement for that office). In that opinion, we recognized that expenditures for licensing raised different issues than expenditures for education. *Id.* (“It is the knowledge, however, not a professional license, that is useful [to a mayor’s official duties]. The license itself allows the actual practice of engineering, which would be of value primarily for the mayor’s *personal* purposes.”) (emphasis added). Unlike professional licenses, we stated that a candidate or officeholder may not use political contributions to pay for general education or prepare for a private career, but may use political contributions to pay for education “if the education primarily furthers activities as a candidate or officeholder.” *Id.* at fn. 1.

In our opinion, creating an educational podcast for practicing lawyers would be connected to the judge's performance of official duties and activities, and therefore, paying for ordinary and necessary expenses related to creating such a podcast is a permissible use of political contributions. *See* Tex. Elec. Code § 253.035(d)(1). Not only does our precedent support this opinion, so too does the Texas Code of Judicial Conduct, which defines certain "extra-judicial activities" of judges, including to "speak, write, lecture, teach and participate in extra-judicial activities concerning the law, the legal system, the administration of justice and non-legal subjects, subject to the requirements of this Code." Tex. Code Jud. Conduct, Canon 4(B)(1), *reprinted* in Tex. Gov't Code Ann. tit. 2, subtit. G., app. B (West 2013).

However, we decline to opine on whether the specific equipment and services identified by the requestor are ordinary or necessary. Instead, and only for the purposes of this opinion, we rely on the requestor's statement that the equipment and services were identified after thorough research on what is ordinary and necessary for a "small scale podcast." Assuming that is true, then the expenditures are permissible under Section 253.035(d)(1) of the Election Code.

Importantly, even though a judge may use political contributions to pay for podcasting equipment, he may not then convert that equipment to personal use. *See* Tex. Ethics Comm'n Op. No. 25 (1992) (judges may use political contributions to purchase electronic equipment for use in the judge's courtroom, but may not convert the assets to personal use). Instead, the equipment would be subject to various provisions of Title 15 of the Election Code applicable to assets purchased with political contributions. *Id.*; *see also* Tex. Ethics Comm'n Op. No. 296 (1995) ("Items purchased with political contributions may not be converted to personal use at the end of an officeholder's tenure in office and would need to be disposed of in a manner consistent with Section 254.204 of the Election Code.")