



# TEXAS ETHICS COMMISSION



---

## ETHICS ADVISORY OPINION NO. 569

---

December 9, 2021

### ISSUES

*Whether a candidate or officeholder may use her existing political contributions to establish a general-purpose political committee (GPAC), which she will control.*

*Whether a candidate or officeholder may receive a salary from a GPAC that the candidate or officeholder established or controls. (AOR-653)*

### SUMMARY

A candidate or officeholder may use her own political contributions to establish a GPAC and may control such a GPAC.

Political contributions “accepted” by a candidate-established or controlled GPAC are accepted by a person as a candidate or officeholder and therefore may not be converted to personal use by the controlling candidate or officeholder and may not be used to pay the controlling candidate or officeholder a salary.

Personal use restrictions notwithstanding, the Penal Code gift and honorarium restrictions would allow such employment under only a narrow set of facts, and such employment may violate the standards of conduct for a public servant.

### FACTS

The requestor is a member of the legislature. The requestor plans to use her existing political contributions to establish a GPAC to support candidates and county political parties in state and local elections in Texas. The requestor plans to exercise control over the GPAC and act as its executive director. If the GPAC is able to garner sufficient support, the requestor also plans to draw a salary as executive director of the GPAC. The requestor asks whether drawing a salary from the GPAC would constitute a conversion of political contributions to personal use due to the use of her political contributions as seed money or due to her exercise of control over the GPAC.

## ANALYSIS

### Candidates and officeholders may establish and control GPACs.

The requestor's question focuses on conversion of political contributions to personal use, but to reach that question, the Commission must decide whether a candidate-established or controlled political committee can exist as a separate entity from the candidate's campaign when the candidate has control over the disposition of the political committee's funds.

"Political committee" means two or more persons acting in concert with a principal purpose of accepting political contributions or making political expenditures. The term does not include a group composed exclusively of two or more individual filers or political committees required to file reports under this title who make reportable expenditures for a joint activity. Tex. Elec. Code § 251.001(12).

Nothing in title 15 plainly prohibits candidates and officeholders from forming or establishing GPACs, and several provisions indicate that they may. For example, the definition of a political committee suggests a title 15 filer may form a GPAC so long as she is not acting in concert exclusively with other title 15 filers. Tex. Elec. Code § 251.001(12) (excluding "a group composed exclusively of *two or more individual filers* or political committees...") (emphasis added). In addition, section 252.003(a)(4)(A) provides that a GPAC "established or controlled by a candidate or an officeholder" may not accept certain corporate contributions, which implies that such a committee may exist.

In our opinion, a candidate or officeholder may establish and control a GPAC that is distinct from her campaign, provided the committee is formed with a principal purpose of supporting or opposing candidates other than the establishing or controlling candidate or officeholder, or measures. The candidate-established or controlled GPAC must also maintain formal separation from the campaign of the candidate or officeholder establishing or controlling it. The GPAC and candidate or officeholder must also give effect to intent of the donor when deciding the recipient of political contributions. *See* Tex. Elec. Code § 253.001 (prohibiting contributions in the name of another).

### Political contributions accepted by a candidate-controlled GPAC are subject to the personal use restriction.

A person who accepts a political contribution as a candidate or officeholder may not convert the contribution to personal use. Tex. Elec. Code § 253.035(a). Similarly, a specific-purpose political committee that accepts a political contribution may not convert the contribution to the personal use of a candidate, officeholder, or former candidate or officeholder. *Id.* § 253.035(b).<sup>1</sup> But the

---

<sup>1</sup> A "Specific-purpose committee" is defined as:  
a political committee that does not have among its principal purposes those of a general-purpose committee but does have among its principal purposes:  
(A) supporting or opposing one or more:  
(i) candidates, all of whom are identified and are seeking offices that are known; or

personal use prohibition normally does not apply to political contributions accepted by a general-purpose committee. *See id.* § 253.035.<sup>2</sup>

“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). “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” are not a personal use. *Id.*

A candidate or officeholder may make a contribution from political contributions to a general-purpose political committee. Tex. Ethics Comm’n Op. No. 47 (1992). However, a candidate may not pay herself a salary from contributions accepted as a candidate or officeholder, or by a specific-purpose committee. A salary is quintessentially personal compensation, to be used at the recipient’s personal discretion. A candidate’s time spent on a campaign or engaging in officeholder activities is not an expense that can be charged to the campaign. Therefore, a candidate or officeholder’s payment of a salary to herself would be a conversion to personal use.

In our opinion, political contributions putatively accepted by a candidate-controlled GPAC are, in effect accepted by a person “as a candidate or officeholder,” and subject to the personal use restriction. A candidate or officeholder cannot avoid personal use restrictions by labeling a political committee under her control a GPAC. Instead, when a candidate or officeholder controls the ultimate disposition of political contributions, the candidate or officeholder accepts the contributions as “a candidate or officeholder” even if she does so on behalf of a GPAC. *See* Tex. Elec. Code 253.035(a) (applying the personal use restriction to contributions accepted “as a candidate or officeholder”). Therefore, a candidate or officeholder may not accept a salary from a political committee she established or controls.

To hold otherwise would render the personal use restriction a nullity. A candidate or officeholder’s campaign is already able to carry out the functions of a GPAC by making political contributions to other candidates, officeholders, political committees, and political parties without forming a separate political committee. Tex. Ethics Op. No. 47 (1992). If candidate or

- 
- (ii) measures, all of which are identified;
  - (B) assisting one or more officeholders, all of whom are identified; or
  - (C) supporting or opposing only one candidate who is unidentified or who is seeking an office that is unknown.

Tex. Elec. Code § 251.001(13).

<sup>2</sup> A “general-purpose political committee” is defined as:  
a political committee that has among its principal purposes:

- (A) supporting or opposing:
  - (i) two or more candidates who are unidentified or are seeking offices that are unknown; or
  - (ii) one or more measures that are unidentified; or
- (B) assisting two or more officeholders who are unidentified.

*Id.* § 251.001(14).

officeholder-controlled GPACs were not subject to the personal use restriction, candidates and officeholders could free themselves of the personal use restriction simply by encouraging contributors to give to GPACs they control instead of their campaigns. Likewise, existing candidate-controlled specific-purpose committees would need only re-label themselves as GPACs and intend to make political contributions to others to avoid the personal use restriction. This cannot be the result the legislature intended when it applied the personal use restriction to political contributions “accepted as a candidate or officeholder.”

Payments to a state officer are subject to the Penal Code gift and honorarium restrictions.

As a general rule a legislator may accept a fee for work performed in a capacity other than as a legislator. Tex. Ethics Comm’n Op. No. 508 (2013) (citing Tex. Ethics Comm’n Op. No. 371 (1997)). However, a legislator is generally prohibited from soliciting, accepting, or agreeing to accept a benefit from any person unless a specific exception under section 36.10 of the Penal Code applies. Penal Code § 36.08(f). A “benefit” is “anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct and substantial interest.” *Id.* § 36.01(3).

A fee or salary is a permissible “benefit,” when is given to a public servant for “legitimate consideration in a capacity other than as a public servant.” Penal Code § 36.10(a)(1); *See also* Tex. Ethics Comm’n Op. No. 192, n.3 (1994). “Legitimate consideration” is consideration “commensurate with the value of the services.” Tex. Ethics Comm’n Op. No. 358 (1997) (citing Tex. Ethics Comm’n Op. No. 41, at 1 n.1 (1992)). A public servant acts “in a capacity other than as a public servant” when it is “the services rendered and not the status of the public servant rendering the services that is of value to the person paying for the services.” *Id.*

Section 36.08 therefore does not prohibit a legislator from accepting compensation that is commensurate with the actual value of the services provided by the public servant if the services rendered, and not the status of the public servant rendering the services, are of value to the person paying for the services. Tex. Ethics Comm’n Op. Nos. 358 (1997), 41 (1992). Whether compensation reflects the actual value of services is a fact question requiring the consideration of all relevant circumstances. Tex. Ethics Comm’n Op. No. 508 (2013).

Here, questions of whether the compensation truly reflects the actual value of services provided are particularly acute because the legislator will both control the spending of the GPAC and be its employee. The substantial value a legislator brings to an entity that will rely on political contributions for its survival also presents a difficult fact question about whether the legislator’s skill and expertise or her status as an officeholder provides value to the GPAC. However, it is possible for a legislator to receive legitimate consideration in a capacity other than as a public service from a GPAC.

Legislators are also prohibited from accepting an honorarium for services that they would not have been asked to provide but for their official position. Tex. Penal Code § 36.07(a). For a legislator to accept compensation from a GPAC or any other person, the services must be provided in a capacity other than as a legislator, and his official position must not be a reason for his employment. *See, e.g.,* Tex. Ethics Comm’n Op. No. 508 (2013), 148 (1993). Whether the

honorarium prohibition applies is also a fact question requiring a consideration of all relevant facts. *Id.*

It is difficult to separate a legislator's status as a public servant from her employment with the GPAC. The GPAC will depend on contributions from people who may have a mixed motive of contributing to the GPAC to get their preferred candidates elected and gaining favor with the legislator by contributing to her salary. Since the requestor's status as a legislator may play an integral role in the fundraising success of the GPAC, it is difficult to say that the legislator would have received a salary but for her status as a legislator. The legislator deciding to establish the GPAC and deciding to hire herself also complicates the question of whether she would have been hired but for her status as an officeholder. But again, compensation paid to a candidate or officeholder from a GPAC does not necessarily violate the honorarium prohibition.

A legislator's employment with a GPAC may violate the standards of conduct for a state officer.

Chapter 572 of the Government Code sets out standards of conduct applicable to all state officers, including legislators. Tex. Gov't Code § 572.051. One standard is that a state officer should not accept or solicit any gift, favor, or service that might reasonably tend to influence the officer in the discharge of official duties or that the officer knows or should know is being offered with the intent to influence the officer's official conduct. *Id.* at § 572.051(a)(1). Another standard is that a state officer should not accept other employment or compensation that could reasonably be expected to impair the officer's independence of judgment in the performance of the officer's official duties. *Id.* at § 572.051(a)(3). The legislature has not attached specific sanctions to violations of those standards beyond termination of an employee, which is not applicable here. *Id.* at § 571.051(b), (e).

Whether a state officer's particular activity is appropriate under these standards depends upon the officer's circumstances. *See* Tex. Ethics Comm'n Op. No. 358 (1997). The Commission has opined that it is a matter of personal ethics for each state officer to determine whether particular employment would violate that standard. Tex. Ethics Comm'n Op. Nos. 156 (1993), 41 (1992). However, a legislator depending on political contributions to a general-purpose committee for her livelihood certainly raises questions to the appropriateness of such employment. The GPAC will depend on political contributions to pay the legislator's salary. This puts the requestor in the position to rely on contributors to fund her campaign as well as her lifestyle. Such an arrangement leads to obvious and natural questions as to whether the employment may tend to influence the officer in the discharge of her official duties. *Id.* at § 572.051(a)(1), (3).