



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 591

September 27, 2023

ISSUE

Whether a retired district court judge may use political contributions to pay for his and his spouse's headstones or monuments at the State Cemetery of Texas. (*AOR-687*).

SUMMARY

A retired district court judge may use political contributions to purchase a headstone or monument for himself and his spouse at the State Cemetery of Texas because the headstones or monuments are related to the requestor's activities as an officeholder and the headstone or monument will be the property of the state.

FACTS

The requestor is a retired district court judge who plans to be buried at the Texas State Cemetery upon his death. His spouse also has a burial plot reserved at the same cemetery.

The Texas State Cemetery was founded in 1851 "to honor those individuals who have made a significant impact on the history of Texas." Texas State Cemetery, Texas State Preservation Board, 2018 Strategic Master Plan. The cemetery serves as "the final resting place of Governors, Senators, Legislators, Congressmen, Judges and other legendary Texans who have made the state what it is today," according to its Website. The cemetery also serves as a museum, offering guided tours to school groups and the general public.

Only former state legislators, elected state officials, and other people who made a significant contribution to Texas history and culture are eligible for burial at the cemetery. Tex. Gov't Code § 2165.256. The spouse of such a notable Texan is also eligible for burial at the Texas State Cemetery. *Id.*

It is customary for the headstone or monument to provide information regarding the officeholder, elected or appointed positions held, and dates served. The information contained on the headstones and monuments helps the Texas State Cemetery illustrate the historical and cultural aspects of Texas.

The cemetery is administered by the State Preservation Board and the State Cemetery Committee. Each monument and headstone is subject to review of the State Cemetery Committee and must comply with regulations promulgated by the State Preservation Board. The

monuments or headstones are typically purchased by the estate of the person interred but become the property of the state. 13 Tex. Admin. Code § 71.11(e).

The requestor asks whether he may use his unexpended political contributions to purchase the monument or headstone for both himself and his spouse.

ANALYSIS

Title 15 of the Election Code prohibits the personal use of political contributions. Tex. Elec. Code § 253.035.

“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 “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 Ethics Advisory Opinion No. 199 the Commission held “an expenditure to purchase a portrait of a retiring judge for the county courthouse where the judge presided is connected to the duties and activities associated with the office and is therefore a permissible use of political contributions.” Tex. Ethics Comm’n Op. No. 199 (1994).

A headstone or monument at the state cemetery for a retired judge is analogous to a portrait hung in a county courthouse in that the requestor’s headstone or monument would become state property to be viewed by the public.

The headstone is also related to the requestor’s activities as an officeholder. The requestor is only eligible for a plot due to his state service. The headstone itself will also note the duration and type of service provided by the requestor and be displayed at a public cemetery among other notable Texans. Importantly, the headstones will be the property of the state. The requestor’s spouse is also only eligible for burial in the Texas State Cemetery due to the requestor’s state service. The headstone of the spouse also provides a fuller picture the state official’s life in furtherance of the educational mission of the Texas State Cemetery. For those reasons, the purchase of a headstone for a plot at the state cemetery for the requestor and his spouse is not a personal use.

We also note that even if the purchase of a headstone is not a conversion to personal use, six years after ceasing to become a candidate or officeholder or filing a final report, whichever is later, all unexpended political funds must be disposed of in specific statutorily prescribed ways. Tex. Elec. Code §§ 254.203, .204. Purchasing a headstone or monument is not one of the approved expenditures.