

STATE ETHICS ADVISORY COMMISSION

ADVISORY OPINION 1984-16

Re: If a candidate or office-holder secures a personal loan and then loans the money to a specific purpose political committee established to support that person, how should the loan be reported under Chapter 14 of the Election Code?

This opinion responds to a request (AOR 1984-5) from the Public Servant Standards of Conduct Advisory Committee for a State Ethics Advisory Commission opinion. That request was received by the Commission at its meeting on January 13, 1984, and relates to the following issue:

If a candidate or office-holder secures a personal loan and then loans the money to a specific purpose political committee whose funds are dedicated to that candidate or office-holder, must the candidate or office-holder report the details of the personal loan or is the reporting of the loan from the candidate or officeholder to the political committee sufficient?

For the purposes of this opinion we shall assume that:

- 1) the value of the loan exceeds \$50.00;
- 2) the loan is obtained from an established lending institution which was continuously engaged in the business of lending money for more than one year prior to the making of the loan;
- 3) the loan is made in the due course of business;
- 4) the candidate or office-holder individually secures the loan without the assistance, guarantee or agreement to assume any portion of the financial obligation by any other person.

The applicability of Chapter 14 to the facts of this opinion request differ according to whether the person obtaining the loan is a candidate or officeholder. Therefore, we will consider the Chapter 14 status of candidate first.

Tex. Elec. Code Ann. art. 14.01(D)(1) (Vernon Supp. 1984) defines "contribution" in part as:

any advance, loan, deposit or transfer of funds, goods, services or any other thing of value . . . to any candidate, or political committee, which advance or other such item is involved in an election; providing that an individual or group of persons is involved in an election upon the receipt of a contribution or the making of an expenditure which was given or made and received with the intent that it be used or held for some election (Emphasis added.)

Therefore, a candidate must report the acceptance of a personal loan as a contribution under art. 14.07(C)(1) (a), if that loan was made and received for use in an election.

Chapter 14 distinguishes certain loans obtained from established financial institutions from loans obtained by a candidate from other persons. Article 14.06 of the Election Code prohibits a corporation, as that term is defined in art. 14.01(C), from making a contribution to support or oppose a candidate. The definition of "corporation" includes "national, state, private or unincorporated banks." However, the legislature specifically excluded certain loans obtained from this type of corporation from the definition of contribution, by providing that:

nothing in this section shall prevent the making of a loan or loans to any candidate, officeholder, or political committee, for campaign or other lawful purposes by any corporation which is legally engaged in the business of lending money and which has conducted such business continuously for more than one year prior to the making of such loan, provided the loan is made

in the due course of business and is not directly or indirectly a contribution. Tex. Elec. Code Ann. art. 14.06(C). (Emphasis added.)

For the purposes of Chapter 14, a loan made "in the due course of business" is one which is made in accordance with applicable banking laws and regulations; bears the usual and customary interest rate of the lending institution for the category of loan involved; assures repayment; is evidenced by a written instrument; and is subject to a due date or amortization schedule. See Secretary of State Political Funds Reporting and Disclosure Directive §3.04(d) (1984). These factors evidence the fact that the bank making the loan acted in accordance with established banking business practices and not with the intent to make a "contribution" or "expenditure" as those terms are defined in Chapter 14. On the other hand, a loan made at a special reduced rate of interest, or made with the intention of not requiring repayment, would not be a loan made "in the due course of business," and would constitute a "contribution" prohibited by art. 14.06(A).

Since a loan from a bank to the candidate made in the due course of business does not constitute a contribution, it is not required to be reported by the candidate as such. S.O.S. Elec. Law Op. No. JWF-26 (1984). Nevertheless, certain information about the loan would be reportable by the candidate when others assist him in obtaining the loan. Article 14.07(C)(1)(d) requires the reporting of:

the full name and complete address of each person who assisted in obtaining credit or a loan of money for or on behalf of the candidate, office-holder, or political committee, or who guaranteed or otherwise agreed to assume any financial obligation for or on behalf of the candidate, officeholder, or political committee, if the benefit of the credit, the proceeds of the loan, or the guarantee or assumption of the obligation was to be involved, directly or indirectly, in an election, and the date and total value of the credit, loan, or guarantee or assumption

Under the facts presented, therefore, the loan from the bank to the candidate is not reportable under Chapter 14. A separate, distinguishable transaction occurs, however, when the candidate makes a loan from himself to a political committee.

From the previous discussion of art. 14.01(D)(1), we conclude that this second loan transaction constitutes a "contribution" from the candidate and must be reported by the recipient political committee in accordance with art. 14.07(C)(1)(a), which requires disclosure of:

the full name and complete address of each person from whom contributions in an aggregate amount of more than \$50 were received, and the date and amount of the contributions . . .

We additionally note that the candidate loan to the political committee constitutes an "expenditure" by the candidate as defined in art. 14.01(E). This expenditure must be reported by the candidate in accordance with art. 14.07(C)(1), which requires disclosure of:

the full name and complete address of each person to whom any expenditures aggregating more than \$50 were made, and the date, amount, and purpose of the expenditures

In summary, the candidate in question is not required to report the personal loan from the bank to the candidate. However, Chapter 14 requires that the loan from the candidate to the political committee be reported as an expenditure by the candidate. The political committee must report it as a contribution from the candidate.

In regard to office-holder transactions, art. 14.01(D)(2) defines "contribution" in part as:

any advance, deposit or transfer of funds, goods, services or anything of value or creation of any contract or obligation, enforceable or unenforceable, to transfer any funds, goods, services, or anything of value knowingly accepted by any officeholder for the purpose of assisting such person in the performance of duties or activities in connection with the office which are nonreimbursable by the state or political subdivision

This definition differs from that in art. 14.01(D)(1) in that the word "loan" is not included in art. 14.01(D)(2). For this reason, and relying on the rationale previously discussed pertinent to the candidate in question, it is the opinion of the Commission that the loan from the bank to the office-holder is not reportable under Chapter 14. However, like the candidate loan, a loan to an office-holder when others assist in securing the loan would be reportable in accordance with art. 14.07(C)(1)(d).

The loan made by the office-holder to the specific purpose political committee whose funds are dedicated to the office-holder is governed by articles 14.01(D) and 14.02(A) of the Code. While art. 14.01(D)(2) does not specifically include a loan to an office-holder, art. 14.02(A) does expressly permit such office-holder funds to be subsequently utilized as campaign contributions as defined in art. 14.01 (D) (1). Therefore, it is the opinion of the Commission that at the time the loan is made from the office-holder to the political committee it must be reported as if it were a "contribution" to the committee as defined in art. 14.01(D)(1). Any other conclusion would be inherently inconsistent with the political funds reporting and disclosure purposes of Chapter 14.

A question remains regarding whether the office-holder is required to report his loan to the political committee as an "expenditure". The Commission concurs in and relies upon the position of the Secretary of State that "[p]ayments from the personal funds of an office-holder do not constitute an office-holder expenditure unless made from contributions." Secretary of State Political Funds Reporting and Disclosure Directive §5.02◆ (1984). See also Secretary of State Political Funds Reporting and Disclosure Directive 35 (1978). Under the facts presented, the proceeds of the personal loan from the bank to the office-holder are considered to be the personal funds of the office-holder. Therefore, it is the opinion of the Commission that the office-holder is not required to report his loan to the political committee as an expenditure.

SUMMARY

A loan made in the due course of business from a bank to a candidate or office-holder is not required to be reported under Chapter 14, provided that no other person assisted the candidate or office-holder in obtaining the loan.

A subsequent loan by the candidate of the bank loan proceeds to a political committee constitutes an "expenditure" which is reportable by the candidate and a "contribution" which is reportable by the political committee.

A subsequent loan by the office-holder of the bank loan proceeds to a political committee does not constitute an office-holder "expenditure" and does not require reporting by the office-holder. However, it does constitute a "contribution" which is reportable by the political committee.

W. Page Keeton, Chairman
State Ethics Advisory Commission
Adopted this 14th day of September, 1984.