

# STATE ETHICS ADVISORY COMMISSION

## ADVISORY OPINION 1984-17

Re: Can contributions promised to a candidate or office-holder before September 1, 1983, but not received until after that date, be used for personal purposes? Must political contributions received after August 31, 1983, be kept separate from those received on or before that date?

This opinion responds to a request (AOR 1984-11) from the Public Servant Standards of Conduct Advisory Committee for a State Ethics Advisory Commission opinion. The request was received by the Commission at its meeting on January 13, 1984, and relates to the following issue:

If contributions are promised to but not received by a candidate or office-holder before September 1, 1983, can the office-holder use such funds for personal purposes? Must political contributions received after August 31, 1983, be kept separate from those received on or before that date?

Prior to the passage of House Bill 2154, 68th Legislature, Regular Session, 1983, Chapter 14 did not prohibit the conversion of contributions to personal use. However, House Bill 2154, which became effective on September 1, 1983, amended Chapter 14 of the Texas Election Code by adding section 239d (art. 14.03(d) of Vernon's Texas Election Code Ann.) to read in pertinent part:

(a) A person who accepts a contribution . . . as a candidate or office-holder shall not convert such contributions to personal use except as authorized by the State Ethics Advisory Commission. (Emphasis added.)

The prohibition in Tex. Elec. Code Ann. art 14.03(d) applies only to contributions accepted on or after September 1, 1983. Sec. 16, H.B. 2154, 68th Legislature, Regular Session, 1983.

The term "contribution" as used in that section and defined in art. 14.01 (D) means:

(1) any advance, loan, deposit or transfer of funds, goods, services or any other thing of value, or any contract or obligation, whether enforceable or unenforceable, to transfer any funds, goods, services, or anything of value to any candidate, or political committee, which advance or other such item is involved in an election . . . or . . . (2) 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 office-holder 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 . . . .

According to the definition of "contribution" and the interpretation of that term by the secretary of state:

A "contribution" includes a contract or obligation, whether enforceable or not, to transfer something of value to a candidate, provided that the contribution was given and accepted with the intent that it be used or held for some election. Tex. Elec. Code Ann. art. 14.01(D)(1). Therefore, a pledge is a contribution. A contribution becomes reportable upon the recipient's decision to accept the contribution; actual receipt of the promised contribution is not necessary. Secretary of State, Political Funds Reporting and Disclosure Directive § 4.04 (c)(2) (1983), quoted in Election Law Opinion JWF-22 (1983). See also S.O.S. Elec. Law Op. No. DAD-68 (1982).

A contribution becomes reportable upon the candidate or office-holder's acceptance of the offer. Chapter 14 distinguishes between receipt and acceptance and specifically recognizes the fact that receipt does not

necessarily constitute acceptance. Article 14.07(C)(5) affirms that "[a] contribution received but not accepted is not required to be reported . . ." A candidate or office-holder's determination to accept an offered contribution may occur before, at or after the time of actual receipt.

Acceptance, not the offer or the receipt of a contribution, triggers reportability. As a matter of law, a contribution is deemed accepted at the end of the reporting period during which the contribution is received unless the candidate or office-holder makes a determination not to accept the contribution by that date. A contribution received but not accepted must be returned no later than the 30th day after the filing deadline. See art. 14.07(C)(5).

In the case of an indefinite offer of political funds, a candidate or office-holder will not ordinarily make the decision to accept the offer of pledged funds until actual receipt of those funds. If the determination to accept that offer occurs at the time of receipt, the contribution becomes reportable as occurring on that date. On the other hand, if the candidate or office-holder manifests an intent to accept a definite offer of a specific amount of funds at the time the offer is made, that contribution is reportable as of the day of that decision.

Since the personal use prohibition applies only to contributions that were made and accepted on or after September 1, 1983, the prohibition is not triggered by the fact that actual receipt may have occurred after that date.

Chapter 14 of the Texas Election Code is silent regarding the separation of funds accepted before September 1, 1983, from those accepted after that date. However, the Secretary of State has ruled that contributions accepted before September 1, 1983, which are commingled with funds accepted after that date cannot be used for personal purposes. Secretary of State, Political Funds Reporting and Disclosure Directive § 3.02 (c) (4)(1983). This opinion conforms with that rule promulgated by the Secretary of State, and the State Ethics Advisory Commission adopts that rule.

#### SUMMARY

Chapter 14 contributions promised before September 1, 1983 and accepted by a candidate or office-holder before September 1, 1983, but not received until after that date, may be converted to personal use as long as those funds are not commingled with contributions accepted on or after September 1, 1983. Contributions promised before September 1, 1983, accepted after September 1, 1983, and received after September 1, 1983 may not be converted to personal use by the candidate or office-holder.

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