

STATE ETHICS ADVISORY COMMISSION

ADVISORY OPINION 1984-19

Re: Whether computer equipment purchased by an office-holder with office-holder contributions becomes the personal property of the office-holder after he or she leaves office.

This opinion responds to a request (AOR 1984-13) 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 an office-holder purchases a computer and the necessary software from office-holder funds and uses the same for political purposes, do the computer and the data contained therein become the personal property of the office-holder-purchaser after he or she leaves office?

For the purposes of this opinion, we assume that the computer equipment and software were purchased with contributions as defined in Chapter 14 of the Election Code and that the contributions expended for the purchase were accepted on or after September 1, 1983. We further assume that the data has value only to the office-holder and only at the time that he or she is in office or is involved in a political campaign.

Chapter 14, as recently amended, moves beyond the requirements of record keeping and reporting of contributions and expenditures into the area of explicit regulation of the use and limited retention of political funds. H.B. 2154, Acts of the 68th Legislature, Regular Session, 1983, provides that candidates and office-holders may not convert political funds to personal use and may retain political funds for no more than six years after leaving candidate or office-holder status. See Tex. Elec. Code Ann. arts. 14.03d, 14.07a(d) (Vernon Supp. 1984).

The initial question which must be addressed is that of the applicability of the personal use restriction of Chapter 14 to the computer and software. The pertinent statute regarding restricted use of contributions is Tex. Elec. Code Ann. art. 14.03d (Vernon Supp. 1984), which prohibits a person who accepts a contribution as a candidate or office-holder on or after September 1, 1983 from converting the contribution to personal use. The statute defines "personal use" as:

a use which 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.

Article 14.03d, on its face, clearly restricts the use of contributed funds themselves. However, in S.E.A.C. Op. No. 1984-23, this Commission adopted an interpretation of art. 14.03d to the effect that any increments, accretions or accessions derived from or attributed to the investment of contributions are also subject to art. 14.03d. See also Tex. S.O.S. Elec. Law. Op. No. JWF-34 (1984).

The facts before us are different from those in S.E.A.C. Op. No. 1984-23 in that the computer and software in question are purchased with contributions. Thus, they constitute retained "proceeds" from an expenditure of the contributions in question.

These proceeds derived from an expenditure of contributions are analogous to increments, accretions or accessions derived from contributions which are invested, rather than expended. Consequently, it would be logically inconsistent to prohibit a candidate or office-holder from deriving a personal or family benefit from the investment of contributions and at the same time to allow him to convert to personal use the proceeds derived from an expenditure of the same contributions. Therefore, it is the opinion of this Commission that proceeds derive from an expenditure of contributions accepted on or after September 1, 1983, by a candidate or officeholder are subject to the personal use prohibition of art. 14.03d. Thus, the computer and software may be retained by the office-holder-purchaser for the legally prescribed retention period after he or she leaves office, but may not become the personal property of the office-holder.

We note that the nature or form of the proceeds is of no consequence to this interpretation, as long as the proceeds are in fact retained by the purchasing candidate or office-holder. However, where there has been a total relinquishment of contributions and no proceeds retained as, for example, by the purchase of a radio or television political advertisement, art. 14.03d would, of course, have no applicability.

The restrictions of art. 14.03d will continue to apply to the computer equipment and software for as long as they are retained by the office-holder. Tex. Elec. Code Ann. art. 14.07a(d) (Vernon Supp. 1984) provides that a person may retain unexpended contributions for six years after that person is no longer a candidate or office-holder. At the end of the six year period, unless the person becomes a candidate again, the former candidate or former office-holder must dispose of any unexpended contributions and report the disposition by filing a sworn statement not later than the 30th day after the end of the six-year period.

In this regard, art. 14.07a(d) does not specifically refer to the disposition of retained proceeds derived from expended contributions. However, the secretary of state in Tex. S.O.S. Elec. Law. Op. No. JWF-34 (1984) adopted the position that increments, accretions or accessions derived from invested contributions are subject to the disposition and reporting requirements of art. 14.07a(d). Consequently, relying upon JWF34 and the rationale previously discussed herein, it is also the opinion of this Commission that retained proceeds derived from the expenditure of contributions accepted on or after September 1, 1983, are subject to the disposition and reporting requirements of art. 14.07a(d). Therefore, we conclude that the computer and software must be disposed of as provided in art. 14.07a(d) as if they were unexpended contributions.

The third consideration herein regards the applicability of Chapter 14 to the political data in the computer in question. It is assumed that the data has value only to the office-holder and only at the time that he or she is in office or involved in a political campaign. In this regard, the computer data is analogous to the other typical political campaign materials which usually remain after the conclusion of a political campaign. These include such items as bumper stickers, candidate cards, campaign pins and political signs. Therefore, it is the opinion of the Commission that where the political data has no other independent economic value after the office-holder leaves office, it is not considered to be a proceed derived from the expenditure of contributions for the purpose of Chapter 14 use and retention restrictions. We conclude that if the computer data has no independent economic value, then it may be treated as the personal property of the office-holder after he or she leaves office.

In conclusion, if an office-holder purchases a computer and the necessary software from office-holder funds accepted on or after September 1, 1983, and uses the same for political purposes, it is the opinion of this Commission that:

- (1) the computer and software may not become the personal property of the office-holder-purchaser in contravention of art. 14.03d;
- (2) the computer and software may not be converted to the personal use of the office-holder-purchaser in contravention of art. 14.03d;
- (3) they may be retained by the office-holder-purchaser for only six years after he or she leaves candidate or office-holder status in accordance with art. 14.07a(d);
- (4) they must be disposed of as if they were unexpended contributions in accordance with art. 14.07a(d); and
- (5) the political data contained in the computer may be treated as the personal property of the office-holder after he or she leaves office if it has no independent economic value.

The Commission notes, however, that the computer and software may be purchased by the office-holder-purchaser with personal funds paid to the officeholder fund in an amount equivalent to at least their current fair market value at any time before the time of mandatory disposition required by art. 14.07a(d); the funds

paid to the office-holder fund then become subject to the personal use prohibition and retention restrictions discussed above.

SUMMARY

A computer and software purchased by an office-holder with office-holder funds for use for political purposes may not become the personal property of the office-holder after he or she leaves office. However, they may be purchased by the office-holder with personal funds paid to the office-holder fund in an amount equivalent to at least their current fair market value at any time before the time of mandatory disposition required by art. 14.07a(d). The computer and software are subject to the personal use restriction of art. 14.03d and the limited retention provision of art. 14.07a(d). The political data contained therein may be treated as the personal property of the office-holder after he or she leaves office if it has no independent economic value.

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