

# STATE ETHICS ADVISORY COMMISSION

## ADVISORY OPINION 1984-27

Re: May a state office-holder loan money to his campaign and charge interest on the loan? May a state office-holder borrow money from his campaign for personal use? What formalities need to be observed regarding either type of loan?

This opinion responds to a request (AOR 1984-37) dated August 2, 1984, for a State Ethics Advisory Commission opinion. The request was received by the Commission at its meeting on September 14, 1984, and relates to the following issues:

When a state office-holder loans money to his campaign, may he charge the campaign interest on the loan? May a state office-holder borrow from his campaign funds or from his office-holder account, on a temporary basis, for personal use, investments or purchases? What formalities need to be observed regarding such loans? What interest, duration and security terms are appropriate for the loans?

For the purposes of this opinion, we assume that the office-holder is not lending to or borrowing from a political committee, which is a distinct legal entity under the law, but that he is making exchanges between personal funds and campaign or office-holder funds.

The first question posed assumes that it is proper for an office-holder to lend himself money for campaign purposes and then to reimburse himself from contributions. The Commission must first address the issue raised by that assumption. Chapter 14 of the Texas Election Code governs the use and reporting of political funds. The primary purpose of Chapter 14, as indicated by art. 14.07, is the public disclosure of the acceptance of contributions and the making of "expenditures" as those terms are statutorily defined.

Article 14.01(D) defines "contributions in pertinent part as:

Any advance, loan, deposit or transfer of funds, . . . or any contract or obligation, whether enforceable or unenforceable, to transfer any funds . . . to any candidate, which advance or other such item is involved in an election. (Emphasis added.)

A loan or transfer of funds necessitates the movement of ownership or control of funds from one entity to another. See Black's Law Dictionary 844 (5th ed. 1979); 64 Texas Jur. 2d 524 (1965) (definition of "loan"). The Chapter 14 definition of "contribution" also contemplates the existence of two distinct parties, the contributor and the recipient. Examples within Chapter 14 that acknowledge the distinction between a contributor and a recipient are found in articles 14.04, 14.05 and 14.07(C)(5).

A candidate who makes a portion of his own personal funds available for use in his campaign has not accepted a contribution from another person and is not required to report this use of funds as a contribution under Chapter 14. However, he is required to report any payments from his own personal funds that constitute "expenditures," which are defined in pertinent part in article 14.01(E) as:

any payments made or obligations incurred by a candidate . . . when such payments or obligations are involved in an election.

As written, Chapter 14 does not follow generally accepted accounting principles for cash receipts and disbursements. See, e.g., Tex. Elec. Code Ann. art. 14.07(C)(5), art. 14.07(C)(1)(g); Secretary of State, Political Funds Reporting and Disclosure Directive §4.04(c)(2). See also S.E.A.C. Op. No. 1984-17 (the treatment of promises of funds as contributions). The Commission notes that the custom has developed of some candidates reporting "loans" of their personal funds to themselves for campaign use as contributions. Under Chapter 14, such disclosure is surplusage because these transactions do not come within the definition

of contribution. While not requiring the disclosure of these one-party transactions, Chapter 14 has not been interpreted to disallow or discourage such over-reporting.

Before the enactment of HB 2154, 68th Legislature, R. S., 1983, the voluntary disclosure of these "loans" was of no legal consequence. The question now arises, however, as to whether the repayment of such "loans" from contributions is contrary to article 14.03d. Article 14.03d prohibits candidates and office-holders from converting contributions to personal use. That provision reads in pertinent part as follows:

(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.

(b) In this section, "personal use" means 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 . . . .

In the opinion of the Commission, the use of contributions to reimburse oneself in an amount equivalent to the reported "loans" does not violate article 14.03d. The reporting of the personal funds as a so-called "loan," in effect, discloses to the public the availability of certain personal funds for campaign uses. The disclosure of the "loan" as if it were a contribution evidences the candidate's intent to repay himself and forms the basis for a subsequent equivalent reimbursement to the candidate from political contributions accepted from others.

This opinion does not address the situation in which a candidate attempts to reimburse himself from contributions when he has not previously declared his intent to lend his campaign personal funds.

The question posed by the requestor regarding the propriety of paying himself interest for the use of personal funds is answered by the Commission in the negative. Unlike the instance of actual reimbursement, this situation would result in a payment in excess of the personal funds made available for political purposes. Therefore, it is the opinion of the Commission that the amount of any interest payment made from contributions would constitute a conversion of the contributions to a personal use in violation of article 14.03d.

The second question presented in this request relates to a state office-holder borrowing from a campaign or office-holder funds for the office-holder's personal use. On its face, art. 14.03d prohibits the conversion of political funds to personal use. No allowance is made in that article for "temporary" conversions. The intent of the legislature to restrict an officeholder's handling of his political funds is also reflected in art. 14.07a(d). That provision requires mandatory disbursement and severely limits the manner in which such funds may be disbursed. It is the opinion of this Commission that the legislature's intent as expressed in articles 14.03d and 14.07a(d) would be thwarted if an office-holder were free to borrow from his political funds. Therefore, it is the opinion of this Commission that an office-holder may not borrow from his political funds for his personal use. Furthermore, no degree of formality or terms of such "loans" would legitimize an arrangement in which an individual's campaign or officeholder funds become a readily available supplement to the individual's personal funds. Since such a transaction would violate art. 14.03d, any questions regarding formalities, interest, duration, and security terms are irrelevant.

#### SUMMARY

An office-holder may not use campaign contributions to pay himself interest on a loan made from his personal funds to his campaign funds. An officeholder may not borrow from his campaign funds or office-holder funds for his personal use, investments or purchases. The use of campaign contributions for such interest payments or for actual personal use constitutes the conversion of such funds to a personal use in contravention of article 14.03d of the Election Code.

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