

ETHICS INTERPRETATION EI-1991-003
ISSUED SEPTEMBER 11, 1991

The Ethics Commission ["the Commission"] has received your request for an ethics interpretation asking, in effect:

Can unused campaign contributions be used to defray attorney's fees incurred by an officeholder for his or her legal defense to allegations arising out of his or her campaign or performance of duties as an officeholder?

Title 74 O.S. 1991, § 4217 (A) reads, in pertinent part:

Contributions accepted by any candidate or candidate committee shall be *used to defray any campaign expenditures or any ordinary and necessary expenses incurred by the person in connection with his duties as a holder of the public office* including, but not limited to, expenses for use in a future election campaign, *for political activity*, for community activity or for nonreimbursed public office related expenses. Said contributions shall not be used for any other purposes.

[emphasis added]

In the absence of legal authority in Oklahoma defining campaign expenditures, ordinary and necessary officeholder expenditures, and political activity, we looked to language on officeholder expenditures found in the Federal Election Campaign Laws, 2 U.S.C. § 439, which reads in pertinent part:

Amounts received by a candidate as contributions that are in excess of any amount necessary to defray his expenditures, and any other amounts contributed to an individual for the purpose of supporting his or her activities as a holder of Federal office, may be used by such candidate or individual, as the case may be, to defray any ordinary and necessary expenses incurred in connection with his or her duties as a holder of Federal office,...

The Federal Election Commission, interpreting this statute, stated in Advisory Opinion AO 1977-39 that:

...excess campaign funds may be expended to cover the costs of attorney's fees in a civil action brought against a Member of Congress and several of his staff members, assuming no other law to the contrary.

In the *Ethics Manual for Members, Officers, and Employees of the U.S. House of Representatives*, prepared by the staff of the Committee on Standards of Official Conduct, 100th Congress, First Session, page 23, paragraph 1, under the subheading **Fund-Raisers and Testimonials**, reads:

Money raised through Fund-Raisers may be used as a Member's "legal defense fund" to pay legal expenses arising out of the performance of official duties or one's campaign and election. Such use of funds would generally be considered 'campaign related' and not personal. Such funds must be treated as campaign contributions and thus would be subject to all the restrictions and prohibitions of other campaign contributions,

including the reporting requirements, contribution limitations, and prohibitions on corporate, labor union, and Government contractor contributions. Such treatment is also consistent with rulings of the Federal Election Commission....

Page 148, full paragraph 4 of the above cited manual, under the subheading **Use of Campaign Funds**, reads:

Legal defense funds. Money received from Fund-Raisers, and other campaign funds, may be used by a Member of the House for the Member's legal defense of court actions arising from his election to or his holding of Federal office. This Committee has concluded that the use of such funds would be considered campaign related. However, the money raised for such a legal defense fund would still be considered campaign contributions under the House rules and would thus be subject to all the reporting requirements and limitations on contributions applicable to campaign funds generally...

To interpret the Oklahoma provision that campaign contributions could not be used in a candidate's or officeholder's legal defense would be to limit running for office to citizens who were wealthy enough to afford to defend themselves to accusations both of campaign violations and malfeasance or misfeasance in office. Were the person not to become a candidate or to win public office, such allegations would not be made.

It is, therefore, the ethics interpretation of the Ethics Commission, as voted on at its meeting on September 11, 1991, that an officeholder defending himself or herself in litigation arising out of his or her campaign or actions as an officeholder [thus preserving a presumption of innocence] is to the officeholder's political advantage; therefore, it is arguably either within the nexus of "campaign expenditures" or an "ordinary and necessary officeholder expense" or even "political activity". Such an expenditure would, therefore, be authorized by Title 74 O.S. 1991, § 4217 as a use for excess campaign contributions.

Please be advised that ethics interpretations by law will be published by this Commission without identifying petitioners.