

**ETHICS INTERPRETATION EI-1992-003
ISSUED NOVEMBER 6, 1992**

The Ethics Commission, in its regular meeting on November 6, 1992, discussed your request for an Ethics Interpretation as to the following questions:

- I. *Will Sections in House Joint Resolution 1077 ["HJR 1077"] applicable to state officers and employees include board members and employees of public schools and area vo-tech schools of the State of Oklahoma?*
- II. *In the alternative, if HJR 1077 is ruled ineffective as an amendment to the Ethics Commission Act, will Title 74 O.S. 1991, § 4200 et seq. and the proposed rules of the Ethics Commission apply to the public schools of the State of Oklahoma, to include area vo-tech schools?*
- III. *Would HJR 1077 apply to a person who is a sitting board member and not to the same person as a candidate?*

ANALYSIS

- I. WILL SECTIONS IN HOUSE JOINT RESOLUTION 1077 ["HJR 1077"] APPLICABLE TO STATE OFFICERS AND EMPLOYEES INCLUDE BOARD MEMBERS AND EMPLOYEES OF PUBLIC SCHOOLS AND AREA VO-TECH SCHOOLS OF THE STATE OF OKLAHOMA?

The following terms, as amended by HJR 1077, must be considered in answering your first question:

~~47- 28.~~ 28. "Governmental entity" means any department, commission, authority, council, board, bureau, committee, legislative body, agency, public trust, or other establishment of the executive, legislative or judicial branch of the State of Oklahoma or political subdivision thereof. For purposes of rules promulgated by the Ethics Commission pursuant to Section 3 of Article XXIX of the Oklahoma Constitution, the term "governmental entity" shall not include entities of political subdivisions of the State of Oklahoma;

~~29- 48.~~ 48. "State employee" means an elected or appointed officer or employee of ~~the executive, judicial, or legislative branch of state government~~ any state governmental entity, except members of the House of Representatives or State Senate, and an employee, other than an adjunct professor, in the service of an institution of higher education comprising The Oklahoma State System of Higher Education;

55. "State officer" means an elected or appointed officer in a state governmental entity;

[emphasis added]

It is obvious that the term "governmental entity" is intended to include all entities of the state and its political subdivisions. The question is whether employees of all governmental entities are included within the definition of "state employee". But, rather than the definition referring to an officer or employee of any governmental entity, it applies to an officer or employee of "any *STATE* governmental entity". Likewise, the term "state officer" is defined as an officer in a "*STATE* governmental entity". [emphasis added]

The question then is by adding the word "state" to the term "governmental entity", did the Legislature intend to exclude officers and employees of political subdivisions of the state? It seems unlikely that such a broad expansion of the Commission's oversight was intended without notice to either the Commission or to those who would additionally come within its jurisdiction.

Employees of institutions of higher education comprising the Oklahoma State System of Higher Education were intentionally covered both by the Commission's rules and HJR 1077. Had the Legislature intended to additionally include employees and board members of vo-tech and school districts, the Commission feels the intent would have been expressed. That argument, together with the limitation of the word "state" before governmental entity, is persuasive that employees and officers of political subdivisions, including school and vo-tech districts, are not covered by the definitions of state employee and state officer contained in HJR 1077.

II. IN THE ALTERNATIVE, IF HJR 1077 IS RULED INEFFECTIVE AS AN AMENDMENT TO THE ETHICS COMMISSION ACT, WILL TITLE 74 O.S. 1991, § 4200 ET SEQ. AND THE PROPOSED RULES OF THE ETHICS COMMISSION APPLY TO THE PUBLIC SCHOOLS OF THE STATE OF OKLAHOMA, TO INCLUDE AREA VO-TECH SCHOOLS?

Ethics Interpretations EI-88-007 and EI-88-008 [formerly called advisory opinions] help decide this question. These speak to whether members of school boards, in the first instance, and vocational-technical institutions, in the second, are required to file financial disclosure statements. The answer to both was no. Underlying the decisions was the rationale that the Legislature had not intended to treat such members as elected officials. Copies of both opinions are attached hereto, incorporated and made a part hereof in response to your second question.

We next note that the Ethics Commission promulgated rules which were submitted to the Legislature on February 4, 1992. Those were disapproved in Section 1 of HJR 1077, which was signed by the Governor. The lawsuit currently before the Oklahoma Supreme Court does not challenge the disapproval of the rules nor does it seek to reinstate them. For that reason, your second question is moot.

However, for your information, the definition of "governmental entity" contained in 257:1-1-2 of the Commission's rules specifically excluded "entities of political subdivisions of the State of Oklahoma". The definition of state employee included an officer and employee of "any governmental entity" and "an employee, other than an

adjunct professor, in the service of an institution of higher education comprising the Oklahoma State System of Higher Education." A "state official" was defined as "an elected, appointed or employed official in the executive, judicial or legislative branch of the State of Oklahoma." This language thus made clear that employees and officers of school and vo-tech districts would not have been covered by the Commission's rules.

III. WOULD HJR 1077 APPLY TO A PERSON WHO IS A SITTING BOARD MEMBER AND NOT TO THE SAME PERSON AS A CANDIDATE?

The answer to whether a sitting board member must file financial disclosure statements is answered in EI-88-007 and EI-88-08, above cited. The answer to whether candidates are governed by the campaign disclosure requirements of HJR 1077 must be determined by the intentional amendment to the following definition from Section 3:

~~4- 10.~~ "Candidate" means a person who seeks nomination or election to a state or county office. An individual is a candidate when the individual:

~~a.~~ has filed a ~~notification and~~ declaration of candidacy for any public office with the Secretary of the State Election Board or the secretary of any county election board,

* * *

This definition is in conflict with the language retained in the following definitions also from Section 3 of HJR 1077:

~~3- 9.~~ "Campaign" means and includes all activities for or against the election of a candidate to a specific *state or local office* for a specific term or the passage or defeat of a ~~state question~~ ballot measure from the date of the first contribution, the making of the first expenditure, the filing of a declaration of candidacy or a public announcement of intent to seek such election, whichever is first;

~~11- 17.~~ "Contribution" means and includes ~~any money, property, or in-kind services, including but not limited to, printing or engraving, radio or television time, billboards, advertising, subscription, forgiveness of indebtedness, personal or professional services or any other thing of value whatsoever which is given or loaned to be used in a campaign.~~

* * *

The term "contribution" shall not include:

~~a.~~ money loaned to a candidate in connection with his own campaign by a bank, savings and loan association or credit union which is to be repaid with interest at a rate comparable to that of loans for equivalent amounts for other purposes a loan of money made in the ordinary course of business by a financial institution authorized to transact business in this state at terms and interest rates generally available to a member of the public without regard to the recipient's status as a public officer or public employee or a candidate for *state or local office* by the institution,

* * *

[emphasis added]

24- 36. "Local office" means all elective offices for which declarations of candidacy are filed with the secretary of any county election board;

Other relevant language, pertaining specifically to school board or municipal candidates, not amended by HJR 1077, reads as follows:

Section 4201.1

A. The provisions of the Ethics Commission Act, Section 4200 et seq. of Title 74 of the Oklahoma Statutes, shall be administered as follows:

* * *

2. The municipal clerk shall administer the Ethics Commission Act with respect to candidates or candidate committees for municipal office or committees supporting or opposing candidates for municipal office; and

3. The clerk of the board of education shall administer this act with respect to candidates or candidate committees for school district office or committees supporting or opposing candidates for school district office.

B. The municipal clerk and the clerk of the board of education shall not receive any complaints of violations of this act and shall be limited to the duties prescribed in paragraphs 1, 2, 3, 4 and 5 of Subsection A of Section 4206 of this title.

Section 4207

A. A person alleging that a violation of the Ethics Commission Act or rules of the Commission promulgated in accordance with Section 4206 of this title and Section 3 of Article XXIX of the Oklahoma Constitution has been committed may file an affidavit with the Commission pursuant to this section. Except as otherwise provided in this section, ~~complaints~~ affidavits alleging violations of the provisions of this act or rules of the Commission by persons, committees, candidates, public ~~officials~~ officers or public employees of state or county government shall be filed with the Ethics Commission. The Commission shall not accept ~~a complaint~~ an affidavit alleging *a violation by a candidate for local office* other than county office.

Section 4211.

* * *

B. Every candidate or candidate committee for state or county office and every committee, except for committees supporting or opposing municipal or school board candidates, which receives a contribution which exceeds Two Hundred Dollars (\$200.00) in a campaign shall file reports with the Ethics Commission. *Every candidate or candidate committee for local office* other than county office shall file reports with the clerk of the appropriate political subdivision.

* * *

Section 4216.

...No person or family may contribute more than Five Thousand Dollars (\$5,000.00) to a candidate for state office or to a candidate for municipal office in a municipality with a population of over two hundred fifty thousand (250,000) persons, according to the most recent federal decennial census, or to a candidate committee authorized by such a candidate to receive contributions or make expenditures on his behalf, nor more than One Thousand Dollars (\$1,000.00) to a *candidate for other local office* or to an organization authorized by such a candidate to receive contributions or make expenditures on his behalf for a campaign.

* * *

[emphasis added]

Although these provisions have neither been amended to exclude repositories for school board and municipal candidate reports nor the requirement for filing reports nor application of the contribution limits for local office, they do not negate the clear expressed intent of the Legislature that only those seeking state or county offices are "candidates"

CONCLUSION

It is, therefore, the Ethics Interpretation of the Ethics Commission as voted on at its regular meeting held on November 6, 1992, that:

- 1. Sections in House Joint Resolution 1077 ["HJR 1077"] applicable to state officers and employees do not include board members and employees of public schools and area vo-tech schools of the State of Oklahoma;**
- 2. If HJR 1077 is ruled ineffective as an amendment to the Ethics Commission Act, the provisions of Title 74 O.S. 1991, § 4200 et seq. neither require school board nor vo-tech board members to file financial disclosure statements, nor would the proposed rules of the Ethics Commission have required such disclosure;**
- 3. HJR 1077 neither applies to a person who is a sitting school board member nor to campaign finance disclosure by the same person as a candidate for the school board.**

Please be aware that state law requires this agency to publish the Ethics Interpretations it issues. This will be done in such a way as to protect the name of the requesting party.