

**ETHICS INTERPRETATION EI-1993-004
ISSUED JULY 22, 1993**

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

Can campaign contributions to a 1994 candidate committee be used as legal expenses, expenses of the litigation, fines or to pay attorneys' fees for conduct arising out of a 1990 campaign or while an officeholder prior to the 1994 campaign? If so, can such a fund be used to defend allegations of violations of civil or criminal statutes? And, is use of such funds limited to the defense of the candidate, or does it extend to the officers or workers of the campaign? If so, does use of such funds extend to the spouse or relatives of an officeholder?

You have asked several questions pertaining to the ethical conduct of campaigns in Oklahoma. But, the threshold inquiry is whether the Commission should undertake to answer them.

The Commission's authority for issuing ethics interpretations is provided for both in the constitution and in statute. The former stipulates that the Commission "may" respond to questions interpreting its rules [as opposed to the Ethics Commission Act, 74 O.S. 1991, § 4200 et seq.]:

Ethics Interpretations

Ethics Interpretations. The Ethics Commission *may* respond, *pursuant to its rules*, to questions of specific individuals seeking an *interpretation of the Commission's rules* governing ethical conduct for campaigns, state officers, or state employees. Any such official interpretation of the ethics rules shall be binding on the Commission.

OKLA. CONST., Art. XXIX, § 5

[emphasis added]

The proposed Final Rules of the Commission were disapproved in Section One of House Joint Resolution 1077 in May, 1992. The Commission has no rules at this time; hence, the constitutional authority to issue interpretations does not apply.

The statutory basis for ethics interpretations is 74 O.S. 1991, § 4206 (A) (6). It provides:

**Powers and responsibilities of Commission--
Promulgation of constitutional rules and regulations**

A. The Ethics Commission *shall*:

* * *

(6) Issue ethics interpretations pertaining to the provision of this act when requested *by any person of committee under the jurisdiction of the Commission* and publish its ethics interpretations annually; provided that failure of a person to request an

ethics interpretation shall have no relevance in any subsequent proceeding under this act or rules of the Commission involving such person. Provided further, such interpretation shall be binding on the Commission in any subsequent proceeding under this act or rules of the Commission. Sufficient deletions shall be made by the Commission in published ethics interpretations to prevent the disclosure of the identity of the persons involved in the situations presented in the ethical interpretations;

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74 O.S. 1991, § 4206 (A) (6)

[emphasis added]

Although the statute is mandatory, it confines the Commission to responding to questions raised by those under its jurisdiction.

Apart from the foregoing, the Commission believes it has discretion as to when it should speak to certain issues. It also feels it can and should decline to do so where the inquiry pertains to matters being presently litigated and/or investigated.

It is, therefore, the decision of the Ethics Commission, as voted on at its meeting on July 22, 1993, that, under Oklahoma Constitution, Article XXIX, Section 5, the Commission declines to answer this inquiry as to whether campaign contributions can be used as legal expenses, expenses of the litigation and to pay attorneys' fees for conduct arising out of a campaign or while an officeholder, whether campaign contributions to a 1994 candidate committee be used as legal expenses, expenses of the litigation, fines or to pay attorneys' fees for conduct arising out of a 1990 campaign or while an officeholder prior to the 1994 campaign, if so, whether such a fund be used to defend allegations of violations of civil or criminal statutes, and, if so, whether use of such funds is limited to the defense of the candidate, or extends to the officers or workers of the campaign and/or to the spouse or relatives of an officeholder.

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