

**ETHICS INTERPRETATION EI-94-002**  
**ISSUED SEPTEMBER 28, 1994**

The Ethics Commission [the "Commission"] has received your request for an ethics interpretation asking two questions:

1. *Do the Constitutional Ethics Rules [Section 257:1-1-1 et seq. of the Rules of the Ethics Commission, 74 O.S.Supp.1994, Ch. 62, App.] permit a Board of Regents to prohibit the use of meeting rooms of an educational institution within the Oklahoma State System of Higher Education for the purpose of organizing a student organization to support a political candidacy?*
2. *Do the rules [supra] permit a Board of Regents to prohibit distribution of leaflets on cars in parking lots of an educational institution within the Oklahoma State System of Higher Education?*

The Commission notes that, apart from the Constitutional Ethics Rules [supra], these questions raise issues of lawful association and political free speech, as guaranteed by the United States Constitution, as well as the Constitution of the State of Oklahoma. [U.S.C.A. Const. Amend. One; Fourteen. OKLA. CONST., Art. II, §§ 3, 22; 7<sup>1</sup> While the Commission is aware of the latter and will incorporate constitutional analysis into this interpretation, this body is not the arbiter of campus policies. The Commission is, instead, charged with responding to questions of specific individuals seeking an interpretation of the Commissions' rules governing ethical conduct for campaigns, state officers or state employees.

**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 ethics rules shall be binding on the Commission.

OKLA. CONST., Art. XXIX, §5

The Commission interprets ethics rules, which it promulgated in accordance with its constitutional directive.

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"While the freedom of association is not explicitly set out in the [First] Amendment, it has long been held to be implicit in the freedoms of speech, assembly and petition." *Healy vs. James*, 408 U.S. 169, 92 S. Ct. 2338, 33 L. Ed.2d 266 (1972). Likewise, it established that First Amendment rights are incorporated through the due process clause of the Fourteenth Amendment and, hence, apply to the states. The Oklahoma Constitution contains similar provisions. OKLA. CONST. Art. II, §§ 3, 22; 7. The Board of Regents is the authorized governing body of the university. OKLA. CONST. Art. 13, §8; 70 O.S. 1991, §§ 3301 et seq. As such, it acts as the arm of the state to which these mandates apply.

## Ethics Rules

A. After public hearing, the Ethics Commission shall promulgate rules of ethical conduct for campaigns for elective state office and for campaigns for initiatives and referenda, including civil penalties for violation of these rules.

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OKLA. CONST., Art. XXIX, §3

These rules were submitted to the second session of the Forty-fourth Legislature. They were not disapproved and hence became law. Applicable provisions became effective July 1, 1994. The Commission will confine its analysis to the pertinent provisions of these constitutional rules. It will defer to the appropriate forum attendant issues, including the setting of campus policies.

## ANALYSIS

The Commission finds that the organizing of a student group to support a political candidacy is activity designed or timed to influence an election. Depending on the given situation, it arguably involves use of public property to influence elections within the context of the following Constitutional Ethics Rule:

### Use of public funds, property, time, and personnel to influence elections

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(b) **A person shall not use or authorize the use of public funds, property, or time to produce, print, publish, broadcast, or otherwise disseminate material** designed or timed to influence the results of an election for state office or a ballot measure, except political activities or statements inherent to or part of the function of a candidate or an elective officer or in the performance of a state officer's or state employee's duties or as allowed by law, regardless of the lack of specific reference to the election.

(c) **Subsection (b) shall not prevent use of a meeting room, auditorium or similar space in a public facility, provided that:**

(1) if a fee is normally charged for use of the facility, the **fee is the same** for all candidates for state office, political parties or ballot measure committees for such use;

(2) the facility is **not required for public purposes** during the applicable time period;

(3) the **same opportunity** for use of the facility is given **to all candidates for a particular office** who request its use **on a first-come-first-serve basis**;

(4) the same opportunity for use of the facility is given **to all political parties** which request its use on a first-come-first-serve basis; and

(5) the same opportunity for use of the facility is given **to all ballot measure committees** which request its use on a first-come-first-serve basis.

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(g) A person shall not distribute or post, or cause to be distributed or posted, *in a facility ordinarily used for the conduct of state government business*, a communication designed to influence the outcome of an election for state office or a ballot measure.

(h) This section, except for Subsection (e), does not apply to:

(1) activities that are part of the ordinary conduct of the governmental entity;  
and

(2) nonpartisan voter registration activities.

257:10-1-3

[emphasis added]

Subsection (b) of Section 4 of Rule 257:10-1-3 prohibits use of state property for activities designed or timed to influence elections. The rule codifies the Commission's belief that -- as an integral part of the ethical conduct of state officers, employees and campaigns -- public property should not be converted for the support or opposition of any particular candidate or measure.

Yet, when drafting the constitutional rules, the Commission heard testimony that banning all use of public facilities for partisan purposes would work a hardship, particularly where the public facility is the only convenient forum. The Commission was likewise aware that this rule must be crafted in a way to avoid stifling political free association, assembly and speech.

In order to accommodate these, the rule sets forth five specific exceptions. It permits use of publicly owned meeting rooms, auditoriums, or similar space, provided that the fee, if any, is the same as that normally charged; the facility is not then needed for public purposes; and an equal opportunity for use of the facility is given to all candidates, political parties or ballot committees on a first-come-first-serve basis. The Commission believes these are reasonable regulations of the time, manner and management of public property as it relates to the ethical conduct of officers, employees and campaigns for elective state office, initiatives and referenda. It thus feels it drafted the rule in a manner which both guards against conversion of public resources to individual campaigns while respecting free political expression.

The term "property" in this provision is not defined in the constitutional rules. The Commission is cognizant that use of a public building for a specific governmental purpose may justify the limitation upon the exercise of First Amendment rights which interfere with that purpose. [*United States Amalgamated Food Employees Local 590 vs. Logan Valley Plaza, Inc.*, 88 S.Ct. 1601, 391 U.S. 308, 20 L.Ed.2d 603 (1968). *United States vs. Farinas*, 448 F.2d 1334 (C.A.N.Y., 1971), cert. denied 92 S. Ct. 946, 405 U.S. 934, 30 L. Ed.2d 810 (1971)] Indeed, Rule 257:10-1-3 provides limitations. But, since protected First Amendment rights are involved, any restrictions placed upon the use of public property must be "closely drawn to avoid unnecessary abridgment of associational freedoms." *Buckley vs. Valeo*, 424 U.S. 1, 25, 96 S. Ct. 612, 638, 46 L. Ed.2d 659 (1976).

In view of this, the Commission construes "property" in this instance as prohibiting dissemination of literature in buildings where **state government is conducted**. Mindful of constitutional considerations, the Commission interprets this narrowly to mean where state government is **actually conducted**. In a university setting, this will likely be confined to specific areas within the administration building.

"Property", as used in the rule, could arguably include private residences in public housing, public parks, grounds and walkways. If this were the intended meaning, there would have been no need for Subsection (g). On the other hand, if property means portions of developed real estate or personal property owned by the state, there would be a need for Subsection (g).

The Commission thus interprets public property within this context as portions of publicly owned buildings where government is actually conducted, publicly owned vehicles or other personal property, such as copiers, computers, postal machines, printing equipment and the like. It finds the term excludes portions of buildings not used for the actual conduct of state government, as well as incidental use of grounds, sidewalks, roadways, parking lots, common areas, etc.

It hence finds that where criteria of Subsection (c) of Rule 257:10-1-3 are met, nothing in the Constitutional Ethics Rules <sup>[supra]</sup> prohibits use of meeting rooms of an educational institution within the Oklahoma State System of Higher Education for the purpose of organizing a student group to support a political candidacy.

Still, nothing in the Commission's interpretation of the rule should be construed as dictating policy or establishing parameters of First Amendment rights with respect to citizens' use of public property. The Commission notes that Rule 257:10-1-3 itself permits regents to disallow partisan use of rooms in public buildings then needed for public purposes. The Commission is aware that "associational activities need not be tolerated where they infringe reasonable campus rules, interrupt classes, or substantially interfere with the opportunity of other students to obtain an education." *Healy vs. James, supra*. The United State Supreme Court has made this clear:

Campuses of state universities are public buildings dedicated to a special function: education. As such, there is no First Amendment objection to limiting the use of these state-owned facilities to the purpose to which they have been dedicated. Even granting that freedom of speech occupies a preferred position in the hierarchy of constitutional values, it does not follow that it may be exercised at any time, in any manner, on any state-owned property without regard to the primary use to which the property has been dedicated.

*Snyder et al. vs. Board of Trustees University of Illinois*, 286 Fed. Supp. 927 (N.D.I., 1968)

Within the confines of the First Amendment, the regents are, of course, free to set additional restrictions on the use of public property of an educational institution within the Oklahoma State System of Higher Education. Nothing in the ethics rules limits the regents in the kinds of conduct they may prohibit in running an institution. In passing, the Commission notes that where the state officers' actions operate to restrict

protected rights, they must meet a "heavy burden in sustaining the appropriateness of that action." *Healy vs. James, supra.*

With regard to the distribution of leaflets, the Commission finds this activity constitutes an incidental use of public property. As such, there is less justification for restricting the activity on public grounds, sidewalks, parking lots, parks, residences, or to persons or on privately owned vehicles or other personalty located on public property.<sup>2</sup> The Commission thus finds that passing out literature either on vehicles in publicly owned parking lots or in buildings where state government is not conducted is not restricted under Rule 257:10-1-3. Likewise, regents may establish rules and regulations they find appropriate for the proper governance of their institutions.

Finally, the Commission notes that this ethics interpretation does not apply to the conduct of state employees. Instead, it governs conduct of persons who are not state employees.

## CONCLUSION

**It is, therefore, the ethics interpretation of the Ethics Commission, as voted on at its meeting on September 8, 1994, that the Constitutional Ethics Rules [257:10-1-3(b),(c) and (g)] prohibit a Board of Regents of an educational institution within the Oklahoma State System of Higher Education from allowing use of its meeting rooms, auditoriums, or similar space for partisan activities if the facility is needed for public purposes for the period of time required or in those portions of public buildings where government is actually being conducted and allowing dissemination of materials designed to influence an election on publicly owned vehicles, or through use of publicly owned personalty, such as copiers, computers, postal machines, printing equipment and the like.**

**Where criteria of Subsection (c) of Rule 257:10-1-3 are met, nothing in the Constitutional Ethics Rules [supra] prohibits use of meeting rooms of an educational institution within the Oklahoma State System of Higher Education for the purpose of organizing a student organization to support a political candidacy. Such rule does not prohibit dissemination of such materials on public grounds and walkways, parks, residences or to private persons or on privately owned personal property located on public property or in that portion of publicly owned buildings not actually used to conduct government.**

**Nothing in this interpretation of the Constitutional Ethics Rules [supra] should be construed to restrict rules and policies adopted by Boards of Regents, or other public bodies, which have as their basis public interests separate from those of the rules or**

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"Streets, sidewalks, parks and other similar public places are so historically associated with the exercise of First Amendment rights that access to them for the purpose of exercising such rights cannot be constitutionally denied broadly and absolutely." *United States Amalgamated Food Employees Local 590 vs. Logan Valley Plaza, Inc., supra.*

**to apply to the conduct of state employees. Instead, it governs conduct of persons who are not state employees.**

This opinion is confined to interpreting the applicable provisions of the Constitutional Ethics Rules [supra]. For a comprehensive analysis of how this interpretation applies to a given situation, we suggest you confer with your own legal counsel.

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