

**ETHICS INTERPRETATION EI-1994-003  
ISSUED JANUARY 12, 1995**

The Ethics Commission, in regular meeting, addressed your request for an opinion, which the Commission converted to a request for an Ethics Interpretation, on the following question:

*Is the payment of child care, before and after school, appropriate officeholder expense use of campaign funds?*

**FACTS**

You have provided the following facts from which the question arises:

1. You are a single parent.
2. You live on a farm.
3. You have a young school age child who requires care both before and after school.
4. When the Legislature is in regular session, you are required to be away from the home, and, hence are typically prevented from providing this care four (4) days a week.

**ANALYSIS**

The Ethics Commission administers the Ethics Commission Act [74 O.S. 1991, 4200 et seq.] and 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.]. While both bodies of authority speak to uses for campaign contributions, neither specifically lists proper officeholder fund uses.

The Ethics Commission Act [*supra*] addresses use of campaign contributions. It provides:

**Use of campaign contributions--Unused contributions--  
Notification and declaration of candidacy**

A. 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...*

\* \* \*

74 O.S. 1991, §4217

[emphasis added]

It thus permits use of campaign funds for nonreimbursed public office related expenses. But, as noted, the statute provides no guidance on what types of uses fall under the category of "public office related expenses".

The Ethic Commission Constitutional Rules [supra], now in effect, contain a similar provision. It states:

**Use of campaign contributions and use of surplus funds**

**(a) Candidate committees.**

(1) **Use of campaign contributions.** Contributions accepted by a candidate committee may not be converted by any person to any personal use, but shall be used, together with any interest income earned on such contributions, to defray any campaign expenditures or *any ordinary and necessary nonreimbursed expenses incurred by the person in connection with his duties as a holder of the state office*. Said contributions *shall not be used for any other purposes* except as permitted in Paragraph (3) if this subsection...

\* \* \*

257:10-1-20

[emphasis added]

Thus, the rules permit "any ordinary and necessary nonreimbursed expenses incurred by the person in connection with his duties as a holder of the state office." But, as noted, the rules neither define nor list examples of what is meant by "ordinary and necessary nonreimbursed officerholder expenses."

The Commission strictly construed both provisions. Both contain language specifying that campaign funds shall not be used for any other purposes. These funds are given as campaign contributions. Extending their use or interpreting uses broadly may run afoul of the intentions of the contributors.

The Commission thus interprets these provisions as requiring the "expense" to which they speak arise solely out of the fact of being an officeholder. It, hence, adopts and applies a "but for" test. If the expense in question would not have arisen "but for" being an officeholder, it is a legitimate officeholder use of unused or surplus campaign funds. If the expense would have arisen in any other event, it does not qualify under this limited use carved out for funds which otherwise cannot be appropriated for personal use.

Thus, if the expense is one that would have also occurred by virtue of holding other employment, it does not qualify as either a "nonreimbursed public office related expense" or as "any ordinary and necessary nonreimbursed expense incurred by the person in connection with his duties as a holder of the state office."

Child care is an expense which would arise by virtue of a single parent accepting any type of employment. It is hence not unique to the officerholder situation. It is an expense which would have arisen in any event and does not meet the "but for" criteria.

## CONCLUSION

**It is therefore the ethics interpretation of the Ethics Commission, as voted upon at its regular meeting held January 12, 1995, that daily child care as described herein is not a legitimate officerholder expense, as contemplated under either the Ethics Commission Act [supra] or the Constitutional Ethics Rules [supra], and, hence, is not an appropriate use of unused or surplus campaign funds.**

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