

**ETHICS INTERPRETATION EI-1994-006
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 two questions:

If properly documented, is mileage incurred by a candidate in furtherance of his race for public office a proper campaign expenditure?

May a candidate use campaign funds to defend a lawsuit arising out of the campaign?

ANALYSIS

As to the first question, both 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.] speak to how campaign funds are to be spent. Section 4217 of Title 74 of the Oklahoma Statutes provides:

**Use of campaign contributions-
-Unused contributions...**

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...

[emphasis added]

Similar language is reflected in the applicable constitutional rule.

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) of this subsection.

257:10-1-20

[emphasis added]

What constitutes an appropriate campaign expenditure or a "necessary and ordinary" nonreimbursed expense of an officeholder is a fact question. The Commission finds that, provided the mileage is documented, travel [including mileage] incurred while

campaigning or in furtherance of office holder activities is an appropriate campaign expense.

The answer to your second question is found in the Constitutional Ethics Rules [supra]. [Subparagraph (3) of Paragraph (1) of Section (a) of] 257:10-1-20 addresses use of surplus campaign funds. [Since the matter has arisen subsequent to the general election and after a point in time when you have paid all outstanding campaign debts, all your remaining campaign funds are now "surplus" within the meaning of the constitutional rules] At subsection (E) the rules provide that such funds may:

be used to defend legal actions or proceedings arising out of the campaign, election, or the performance of the candidate's official duties as a state officer; provided that a candidate officer who, in the course of such legal actions or proceedings, is found to have violated statutes or any provision of this title shall repay funds used for his or her legal defense to his or her candidate committee;

* * *

The rule thus permits use of campaign funds for defense of legal actions or proceedings arising out of the campaign, election or in performance of official duties as a state officer. The rule carries a proviso that, if later found to have violated statutes or any provision of the constitutional rules, the candidate must repay the campaign fund for funds used in his or her legal defense.

The particular situation you describe pertains to a law suit filed against you for libel or slander by your opponent in a recent race for elective office. The plaintiff takes issue with campaign statements made by you and/or on your behalf. All such statements -- and, hence, the subject matter of the litigation -- arise out of the campaign for office. Section 257:10-1-20 [(a)(3)(E) thus permits you to pay expenses of defending this lawsuit. You should bear in mind, however, that if you are found to have violated statutes or any of the Constitutional Ethics Rules [supra], you will be required to repay the full amounts to your campaign fund.

CONCLUSION

It is therefore the ethics interpretation of the Ethics Commission, as voted upon at the regular meeting held January 12, 1995, that if properly documented, mileage incurred by a candidate in furtherance of his race for public office is a proper campaign expenditure. It is further the ethics interpretation of the Ethics Commission, as voted upon at the same meeting, that [S]ubsection [(a), Paragraph] E of [Sub]paragraph (3) of Section 257:10-1-20 of the Rules of the Ethics Commission [supra] permits a candidate to use campaign funds for defense of legal actions or proceedings arising out of the campaign, election or in performance of official duties as a state officer, provided that, if later found to have violated statutes or any provision of the constitutional rules, the candidate must repay the campaign fund for funds used in his or her legal defense.

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