

**ETHICS INTERPRETATION EI-2002-001  
ISSUED JUNE 21, 2002**

The Ethics Commission [“the Commission”], in the executive session portion of its regular meeting held June 21, 2002, considered your request for an ethics interpretation. You have asked:

*Do the Constitutional Ethics Rules [“the Rules”], Section 257:1-1-1 et seq. of the Rules of the Ethics Commission, 74 O.S. Supp. 2002, Ch. 62, App. require reporting a post-dated check given as a campaign contribution on the date set forth on the check or the date when received?*

**FACTS**

You have advised:

- you are the treasurer of a candidate’s campaign for state office. As such, you are charged with the duty to fill out and file the Campaign Contributions And Expenditures Report [“Form C-1R”].
- the campaign is receiving monetary contributions in the form of checks written on various banking institutions. Some of these are post-dated, meaning they bear a future, as opposed to a current, date.
- it is the intention of the donors providing post-dated checks that these instruments not be paid by the institution upon which they are written until the date set forth on the check.
- the campaign has agreed to hold these checks until the applicable date.
- you are unclear on which date to report the contribution for purposes of the C-1R report.

**ANALYSIS**

The Rules presume that checks received by the campaign are immediately payable. They are therefore silent on the issue of post-dating these instruments. This is hence a case of first impression.

The Commission turns to the Uniform Commercial Code [“UCC”] for guidance. The UCC defines “check” as a draft, other than a documentary draft, payable upon demand and drawn on a bank or a cashier’s check or teller’s check.

**Negotiable Instrument**

- (a) Except as provided in subsections (c) and (d) of this section, “negotiable instrument” means an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it:

(1) is payable to bearer or to order at the time it is issued or first comes into possession of a holder;

(2) is payable on demand or at a definite time; and

(3) does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money ...

\* \* \*

(b) "Instrument" means a negotiable instrument.

(c) An order that meets all the requirements of subsection (a) of this section, except paragraph (1), and otherwise falls within the definition of "check" in subsection (f) of this section is a negotiable instrument and a check.

\* \* \*

(f) "Check" means (i) a draft, other than a documentary draft, payable upon demand and drawn on a bank or (ii) a cashier's check or teller's check. An instrument may be a check even though it is described on its face by another term, such as "money order."

\* \* \*

12A O.S. Supp. 2002, §3-104

The Commission notes the UCC Commentary on subsection (c) specifies that the code has been amended to accommodate technology.

\* \* \*

Subsection (c) is added because the automated check collection system cannot accommodate post-dated checks. A check is usually paid upon presentment without respect to the date of the check. Under former law, if a payor bank paid a post-dated check before its stated date, it could not charge the customer's account because the check was not "properly payable." Hence, the bank might have been liable for wrongfully dishonoring subsequent checks of the drawer that would have been paid had the post-dated check not been prematurely paid.

Under subsection (c) a customer wishing to postdate a check must notify the payor bank of its postdating in time to allow the bank to act on the customer's timely notice before the bank has to commit itself to pay the check. If the bank fails to act on the customer's timely notice, it may be liable for damages for the resulting loss which may include damages for dishonor of subsequent items. This Act does not regulate fees that banks charge their customers for a notice of postdating or other services covered by the Act, but under principles of law such as unconscionability or good faith and fair dealing, courts have reviewed fees and the bank's exercise of a discretion to set fees ...

\* \* \*

Id.

The Commission reads the foregoing as recognition of the post-dating practice. At the same time, the commentary cautions the payor that, in the absence of customer notice, his bank may pay the check ahead of time. The latter is made clear in the explanation under §4-401(c). This provision was designed to permit banks to pay post-dated checks.

\* \* \*

New subsection 4-401(c) allows the bank to pay a post-dated item before the date on the check, unless the customer has previously provided a notice similar to a stop payment order. This resolves the uncertainty in prior law.

\* \* \*

12A O.S. Supp. 2002, §4-401

While the Commission does not encourage the practice, it appears post-dated checks are legal tender. As such, they can constitute campaign contributions. The question then becomes how this species of instrument interacts with the Commission's six day rule regarding acceptance of campaign contributions.

The definition of "accept" provides that contributions received by a campaign committee which are not expressly and unconditionally rejected within six business days are deemed accepted.

#### Definitions

\* \* \*

"Accept," with reference to a contribution means failure by a candidate, treasurer, deputy treasurer or agent of a committee to expressly and unconditionally reject and return a tendered contribution to the contributor within six (6) business days from receipt of the tender.

\* \* \*

Section 257:1-1-2

As such, they are subject to the reporting requirements.

The Commission finds that a post-dated check must be reported on the day it is accepted. According to the definition of "accept," if not deposited, rejected or returned, a contribution is deemed accepted on the sixth business day after receipt.

Acceptance does not require that the check then be deposited. But, it does require the committee to report the check as a contribution and disclose the date of acceptance.

The Commission notes that, depending on when in the election cycle the check is received, the contribution might be reported in a reporting period prior to the time when it is actually deposited. In that event, the committee would not report the

contribution during the period when the check actually comes into the campaign account, since the contribution would have already been reported and included in the cash total.

## **CONCLUSION**

**It is therefore the ethics interpretation of the Ethics Commission, as decided at its regular meeting held June 21, 2002, that a post-dated check must be reported on the day it is accepted. According to the definition of "accept," if not deposited, rejected or returned, a contribution is deemed accepted on the sixth business day after receipt.**

**Acceptance does not require that the check then be deposited. But, it does require the committee to report the check as a contribution and disclose the date of acceptance in the campaign's C-1 R report.**

**The Commission notes that, depending on when in the election cycle the check is received, the contribution might be reported in a reporting period prior to the time when it is actually deposited. In that event, the committee would not report the contribution during the period when the check actually comes into the campaign account, since the contribution would have already been reported and included in the cash total.**

Please be advised that ethics interpretations are fact specific. They answer only the question or questions put forth in the underlying request according to information described in the "Facts" section [supra]. While they may shed light on other situations, this opinion does not necessarily control them. To be binding on the future action of this agency, the interpretation must be directed to the individual situation.

The Commission is authorized by Oklahoma Constitution Article XXIX, Section Five and Section 305(A)(6) of Title 51 of the Oklahoma Statutes to interpret the Rules and the Political Subdivisions Ethics Act, 51 O.S. Supp. 1999, §§ 301-325. Questions pertaining to other Oklahoma Statutes and the Constitution cannot be interpreted by the Commission and must be referred to the appropriate authority.

Ethics Interpretations are published with sufficient deletions to prevent identification of the person or persons involved in the situations herein described. The name of the requestor is considered confidential. This letter has been labeled accordingly.