

**ETHICS INTERPRETATION EI-2002-003
ISSUED SEPTEMBER 20, 2002**

The Ethics Commission [“the Commission”], in the executive session portion of its regular meeting held September 20, 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., permit an elected state official to utilize campaign funds to support a state question? If so, may that officer transfer those funds to a political action committee [“PAC”] formed to support the ballot measure? May the officeholder also make a direct contribution of campaign funds in support of the state question? In either instance, does it make a difference whether the campaign funds are surplus or pre-surplus? If the practice is permitted, are there any limits as to the amount of campaign funds which the official may spend or transfer for this purpose? May the officer further use campaign funds to make independent expenditures supporting the state question? Do contribution limits apply there?

FACTS

You have advised that you represent a state elected official. This officer has surplus or pre-surplus campaign funds which he would like to use to support a state question. You have also advised that, in his current Statement Of Organization [“Form SO-1”], the officer has marked “all specified uses.”

ANALYSIS

The fundamental rule is that campaign contributions may never be converted to personal use. They must, instead, defray costs of running for office. They may also be used for “ordinary and necessary” nonreimbursed officeholder expenses. These include a future election campaign, political activity, community activity and nonreimbursed office related expenses.

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, including, but not limited to, expenses for use in a future election campaign, for political activity, for community activity or for nonreimbursed office related expenses. Said contributions shall not be used for any other purposes except as permitted in Paragraph (3) of this subsection.

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Section 257:10-1-20

These uses pertain to “pre-surplus” funds. Once campaign obligations have been met, left-over funds are deemed “surplus.”

Definitions

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“Surplus funds” arise:

(1) when a candidate committee has an unexpended balance of funds not otherwise obligated for the purposes specified in Paragraph (1) of Subsection (a) of Section 20 of Chapter 10 of this title;

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Section 257:1-1-2

Uses of surplus funds are restricted to those the candidate has chosen on the face of his or her Form SO-1. Those, in turn, may be selected solely from the following list.

Use of campaign contributions and use of surplus funds

(a) **Candidate committees.**

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(2) **Designation of use of surplus funds.** A candidate whose candidate committee has an unexpended balance of funds not otherwise obligated for the purposes specified in Paragraph (1) of this subsection shall designate how the surplus funds are to be distributed. Uses are limited to those included in Paragraph (3) of this subsection and shall be set forth on the committee's statement of organization. Surplus funds may not be expended for any other purpose. The designated use or uses for surplus funds may be changed by the candidate committee by filing an amended statement of organization, provided that no contributions received prior to the date the amended statement of organization is filed with the Commission may be used for the amended use or uses.

(3) **Use of surplus funds.** The surplus funds may:

(A) be deposited with the State Treasurer to the credit of the General Revenue Fund;

(B) be returned to the contributors pursuant to any formula approved by the candidate; provided, any amount returned to a contributor shall not exceed the amount of the original contribution;

(C) be contributed to a charitable organization;

(D) be retained by the candidate or candidate committee for use in a future election for a six-year period following the General Election for the same or a different office;

(E) 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/officerholder 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;

(F) be used for a community activity;

(G) be used for political activity;

(H) be transferred to the state or local central committee of a political party; or

(I) be distributed using a combination of these options.

Section 257:10-1-20

The issue is whether the proposed uses are ones which the Rules contemplate either from surplus or pre-surplus funds.

Expenditures to support or oppose a ballot measure are not among those the Rule enumerates. The answer turns on whether these proposed uses may be grouped under "political" or "community" activity. The Commission finds that they may not.

The scope of each of these categories was outlined in testimony underpinning the Rule. Use of campaign funds to travel to the party's state convention was given as an example of "political activity." Resorting to campaign funds for the price of a pie at a local pie supper to raise money for sidewalks was viewed as an appropriate "community activity." The proposed uses extend far beyond what was contemplated. As such, the Commission finds they are outside the strictures of the Rule.

Testimony was also that use of campaign funds for purposes other than to defray costs of the race should be carefully scrutinized. The premise was that money raised to elect a candidate should not be funneled elsewhere.

The Commission believes that contributors have certain expectations as to how their money will be spent. No one could reasonably foresee that funds given to elect a candidate would end up supporting a state question.

Moreover, not all contributors may favor the ballot measure. Diverting campaign contributions to this end could compel them against conscience to support a cause they personally oppose.

The Commission's decision in no way hinders the political free speech of this official. An alternative is available. Like any citizen, he may contribute his personal funds to further the state question.

Since the proposed uses pertain to a ballot measure, contributions limits do not apply.

Contributions

(a) **Limitations on contributions from a person.**

(1) No person or family may contribute more than five thousand dollars (\$5,000) to a political action committee

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(3) These restrictions do not apply to:

(A) a committee supporting or opposing a ballot measure;

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Section 257:10-1-2

The officer may therefore spend from his own money an unrestricted amount to support this cause. He may do this directly, through a PAC, or in the form of independent expenditures.

CONCLUSION

It is therefore the ethics interpretation of the Ethics Commission, as decided at its regular meeting held September 20, 2002, that Rules' Section 257:10-1-20 does not permit a state elected official to utilize either surplus or pre-surplus campaign funds to support a state question. Like any citizen, he may contribute his own money to further that cause. Since the proposed uses pertain to a ballot measure, contributions limits do not apply. The officer may therefore spend from his personal funds an unrestricted amount to support the state question. He may do this directly, through a PAC, or in the form of independent expenditures.

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.