

ETHICS INTERPRETATION EI-1996-010
ISSUED December 20, 1996

In the executive session portion of its regular meeting held December 20, 1996, the Ethics Commission 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. 1996, Ch. 62, App., permit a legislator to use surplus campaign funds to pay for a deposit, monthly rent and other related expenses in leasing an apartment in Oklahoma City until the legislative session begins, at which time he or she can begin paying the apartment rent from his or her legislator’s per diem allowance?

FACTS

You have advised that the legislator lives sufficiently far from the Capitol to warrant having an apartment in Oklahoma City during legislative session. He/she presently draws per diem only for those days his/ her legislative committees meet. The current per diem allowance is thus insufficient to pay the rent. While it is not vital to have the apartment until session, the legislator has found one he/she likes which might not be available later. You have also advised that, in order to lease this apartment, he/she is willing to pay these costs from personal funds.

ANALYSIS

The Rules [supra] regulate use of campaign funds. The fundamental principle is that contributions to the candidate committee may not be converted to personal use. Subsidiary to that are two provisions. The first is that these funds, together with interest they earn, must be used to defray campaign expenditures. The second is that they may be used for “ordinary and necessary” nonreimbursed expenses of holding public office. These include use in a future election, political activity, community activity and 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 [titled:[Use Of Surplus Funds].

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The Rules incorporated prior statutory language of the now repealed Ethics Commission Act, 74 O.S. 1991, §4200 et seq. These precepts have long been the law in Oklahoma and are consistent with that of other jurisdictions.

The question is whether the deposit, rent and expenses related to leasing the apartment are "ordinary and necessary" nonreimbursed expenses incurred in connection with officeholder duties. The Rules give us little guidance. "Ordinary and necessary" officeholder expenditures are not defined. The Commission has previously interpreted the phrase, however. It adopted a "but for" test, holding that ordinary and necessary expenses are those that would not arise "but for" the individual being an officeholder. Items which meet the test qualify as legitimate campaign fund uses.

... 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 officeholder expenses."

The Commission strictly construes 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.

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In applying the test to the instant facts, the Commission finds that the need for the apartment in the state's Capitol would not have arisen "but for" the requirements of the legislator's public duties. As such, it is an appropriate use of campaign funds to pay for that part of the lease expense not otherwise reimbursed.

CONCLUSION

It is therefore the ethics interpretation of the Ethics Commission, as decided at its regular meeting held December 20, 1996, that Section 257:10-1-2(b) of the Constitutional Ethics Rules [supra] permits a legislator to use campaign funds to pay for a deposit, monthly rent and other related expenses, not otherwise reimbursed, incident to leasing an apartment in the state's Capitol city.

Please be advised that law requires that ethics interpretations be published without identifying the requestor.