

Advisory Opinion Request 2016-01 (Draft A)

Dear Ms. Pollard:

We are responding to your advisory opinion request concerning the application of the Oklahoma Ethics rules to expenditures and contributions made by candidate committees to political parties.

You ask, in effect, the following questions:

- 1. May a candidate committee make an expenditure to purchase a ticket to attend an event hosted by a political party committee where the purpose of the event is fund-raising for the political party prior to the availability of surplus funds provisions in Rule 2.48?**

- 2. May a candidate committee make an expenditure to purchase a ticket to attend an event hosted by a political party committee where the purpose of the event is not fund-raising for the political party prior to the availability of surplus funds provisions in Rule 2.48?**

- 3. May a candidate committee make an expenditure to purchase a sponsorship package for an event hosted by a political party where the sponsorship package includes advertising benefits to the candidate such as a reserved table with multiple tickets at the event, signage identifying the candidate's sponsorship, identification in the program of the event, and identification in electronic presentations at the event prior to the availability of surplus funds provisions in Rule 2.48?**

- 1 **4. May a candidate committee make an expenditure to a political party committee to**
2 **purchase tangible goods or services benefitting the campaign, such as printing,**
3 **postage, mailing lists, polling data, and other promotional opportunities prior to the**
4 **availability of surplus funds provisions in Rule 2.48?**
- 5
- 6 **5. May a candidate committee make an expenditure to a political party committee to**
7 **purchase space for advertising purposes at a political party event prior to the**
8 **availability of surplus funds provisions in Rule 2.48? Space for advertising may**
9 **include a table and space to post and distribute campaign materials, opportunities**
10 **to recruit volunteers, an opportunity to address the attendees at the event, and**
11 **opportunities to solicit and receive contributions.**
- 12
- 13 **6. If the answer to question 1, 2, 3, 4, or 5 is yes, are such expenditures considered**
14 **contributions and, if so, what are the contribution limits?**
- 15
- 16 **7. If the answer to question 6 is yes, are these contributions allowed by Rule 2.43,**
17 **which allows candidate committee funds to “be used to make ordinary and**
18 **necessary campaign expenses” or Rule 2.44, which allows candidate committee**
19 **funds to be used for “officeholder expenses”?**
- 20

Background

22 Ethics Rule 2.2 broadly defines the term “contribution” as “any gift, subscription, loan,
23 guarantee or forgiveness of a loan, conveyance, advance, payment, distribution or deposit of

1 money made to, or anything of value given to, or an expenditure other than an independent
2 expenditure made on behalf of, a political party, political action committee or candidate
3 committee, but shall not include the value of services provided without compensation by an
4 individual who volunteers those services.” Previous Ethics Rule 257:10-1-20 allowed candidate
5 committees to transfer surplus funds “to the state, county or congressional district committee of a
6 political party, not to include an affiliated or connected entity of a political party.” Previous
7 Ethics Rule 257:10-1-20 allowed a candidate committee to designate funds as surplus funds at
8 any time, regardless of whether the seat being sought by the candidate was decided.

9
10 In a similar fashion to the previous Ethics Rules, Ethics Rule 2.48 allows candidate committees
11 to use surplus funds to be “contributed to a political party committee in any amount not to
12 exceed Twenty-five Thousand Dollars (\$25,000.00) in the aggregate.” However, in contrast to
13 the previous rules, Ethics Rule 2.48 only allows surplus funds to exist when the funds are “not
14 otherwise obligated following the election at which the office for which the candidate committee
15 was formed has been determined...” Thus, previous Ethics Rules allowed a candidate to
16 designate surplus funds at any time whereas current Ethics Rules allow a candidate to designate
17 surplus funds only after the office being sought is determined.

18
19 In the past, candidate committees engaged in a variety of activities and expenditures with
20 political parties that were unquestioned due to the lack of a time requirement in the surplus funds
21 provisions. Current Ethics Rules place the time restriction on contributions to political parties
22 raising the questions presented in this opinion about contributions and expenditures to political
23 parties by candidate committees where the contributions and expenditures arguably fit the

1 definition of campaign expenses or officeholder expenses. In essence, the broad question
2 presented is this: Do the Ethics Rules prohibit a candidate committee from making expenditures
3 to political parties prior to the availability of surplus funds, or do the Ethics Rules permit some
4 expenditures by candidate committees to political parties as ordinary and necessary campaign
5 expenses or officeholder expenses?
6

7 **Discussion**

8 The Oklahoma Ethics Commission promulgates rules of ethical conduct for campaigns for
9 elective state office pursuant to the Oklahoma Constitution, Article XXIX, § 3. Rules relating to
10 campaign finance and ethical conduct for campaigns for elective state office are promulgated as
11 Rule 2 of the Oklahoma Ethics Rules. These rules will govern our analysis of your questions.
12

13 **I. May a candidate committee make an expenditure to purchase a ticket to attend**
14 **an event hosted by a political party committee where the purpose of the event is**
15 **fund-raising for the political party prior to the availability of surplus fund**
16 **provisions?**
17

18 No, a candidate committee may not use campaign funds to purchase a ticket from a political
19 party to attend an event where the purpose is to fund-raise for the political party prior to the
20 availability of surplus funds. Ethics Rule 2.2 defines “contribution” as, “Any gift, subscription,
21 loan, guarantee or forgiveness of a loan, conveyance, advance, payment, distribution or deposit
22 of money made to, or anything of value given to, or an expenditure other than an independent
23 expenditure made on behalf of, a political party, political action committee or candidate

1 committee, but shall not include the value of services provided without compensation by an
2 individual who volunteers those services.” The Ethics Rules broadly define the term
3 “contribution” to include all types of payments and conveyances to political parties without any
4 exceptions. Therefore, any payment to a political party for the purchase of a ticket to attend a
5 fund-raising event is a contribution to the political party.

6
7 We conclude above that any payment made to a political party for a fund-raising event is a
8 contribution to the political party. In light of this conclusion, we must examine whether a
9 candidate committee may make a contribution to the political party prior to the availability of
10 surplus fund provisions. Ethics Rule 2.48 states, “Surplus funds of a candidate committee are
11 those funds not otherwise obligated following the election at which the office for which the
12 candidate committee was formed has been determined which, in the candidate’s discretion, are
13 not required to be used for campaign expenses or officeholder expenses.” Once the office is
14 decided, a candidate may dispose of surplus funds as described in Ethics Rule 2.48, which
15 allows, in part, for surplus funds to be “contributed to a political party committee in any amount
16 not to exceed Twenty-five Thousand Dollars (\$25,000.00) in the aggregate.” Therefore, after the
17 candidate’s office is decided, a candidate is permitted to use surplus to make contributions to
18 political parties, which includes purchasing tickets to political party fund-raising events.

19
20 Further examination of the Ethics Rules reveals no support to permit a candidate committee to
21 expend funds in making a contribution to a political party prior to the availability of surplus
22 funds, including expenditures for the purpose of purchasing tickets to a fund-raising event.
23 Ethics Rule 2.43 states, “Contributions to a candidate committee may be used to make

1 expenditures for ordinary and necessary campaign expenses, for contributions to another
2 candidate committee, for operating expenses of the committee or for other purposes not
3 otherwise prohibited by law or these rules.” We first note Ethics Rule 2.43 does not explicitly
4 identify contributions to a political party as a permissive expenditure. Next, we conclude that a
5 contribution to a political party is neither an ordinary and necessary campaign expense nor an
6 operating expense of the committee. Campaign contributions are given to candidate committees
7 for the purpose of successfully electing the candidate and supporting the candidate’s office if
8 successfully elected through the payment of officeholder expenses, and we do not view that
9 purpose to include giving contributions to a political party. Contributions are not given to
10 candidates for the purpose of passing through funds to a political party. If a contributor wishes to
11 support a particular political party, the Ethics Rules permit that contributor to also give funds to
12 the political party. We also recognize Ethics Rule 2.44 allows current officeholders to use
13 campaign funds to pay for nonreimbursed officeholder expenses; however, we do not view
14 making contributions to a political party as a necessary function or expense of an officeholder.¹
15 In addition, Ethics Rule 2.48 prescribing permitted uses of surplus funds is the only provision
16 that specifically provides for contributions by a candidate committee to a political party. Ethics
17 Rule 2.48 specifically provides for the timing, limits, and conditions for a candidate committee
18 to make a contribution to a political party. Such contributions are otherwise not permitted under
19 the Ethics Rules, and we cannot read additional provisions into the Rules where they do not exist
20 without undergoing the required rulemaking process.
21

¹ Although not critical to the analysis in this advisory opinion, a current officeholder may use the balance of surplus funds transferred to a candidate committee seeking a future term to pay officeholder expenses of the current term. Funds raised for a future term may not be used to pay officeholder expenses of the current term.

1 Therefore, we conclude that an expenditure by a candidate committee made to a political party
2 for the purpose of purchasing a ticket to a fund-raising event is a contribution as defined by
3 Ethics Rule 2.2. In addition, we conclude that contributions by a candidate committee to a
4 political party are not ordinary and necessary campaign expenses, operating expenses of the
5 committee, or officeholder expenses, and they are not permitted prior to the availability of
6 surplus funds provisions in Ethics Rule 2.48.

7
8 **II. May a candidate committee make an expenditure to purchase a ticket to attend**
9 **an event hosted by a political party committee where the purpose of the event is**
10 **not fund-raising for the political party prior to the availability of surplus fund**
11 **provisions?**

12
13 No, a candidate committee may not use campaign funds to purchase a ticket from a political
14 party to attend an event where the purpose is not to fund-raise for the political party but is for
15 some other purpose prior to the availability of surplus funds. Such events may include hosting a
16 speaker, a rally, or some other event not specifically designed to be a fund-raiser. Ethics Rule 2.2
17 defines “contribution” as, “Any gift, subscription, loan, guarantee or forgiveness of a loan,
18 conveyance, advance, payment, distribution or deposit of money made to, or anything of value
19 given to, or an expenditure other than an independent expenditure made on behalf of, a political
20 party, political action committee or candidate committee, but shall not include the value of
21 services provided without compensation by an individual who volunteers those services.” The
22 Ethics Rules broadly define the term “contribution” to include all types of payments and
23 conveyances to political parties without any exceptions. Therefore, any payment to a political

1 party for the purchase of a ticket to attend an event that is not specifically designed as a fund-
2 raiser is a contribution to the political party.

3
4 We refer to the reasoning set forth in our response to question one to reach a similar conclusion
5 here. We conclude that any payment made to a political party, even for events other than fund-
6 raising events, is a contribution to the political party. Because Ethics Rule 2.48 specifically
7 provides for the timing, limits, and conditions for a candidate committee to make a contribution
8 to a political party, contributions are only permitted under the Ethics Rules pursuant to the
9 surplus funds provision. Contributions to political parties by candidate committees are not
10 otherwise permitted in the Ethics Rules. In addition, we reiterate our conclusion that
11 contributions by a candidate committee to a political party are not ordinary and necessary
12 campaign expenses, operating expenses of the committee, or officeholder expenses, and they are
13 not permitted prior to the availability of surplus funds provisions in Ethics Rule 2.48.

14
15 **III. May a candidate committee make an expenditure to purchase a sponsorship**
16 **package for an event hosted by a political party where the sponsorship package**
17 **includes advertising benefits to the candidate such as a reserved table with**
18 **multiple tickets at the event, signage identifying the candidate's sponsorship,**
19 **identification in the program of the event, and identification in electronic**
20 **presentations at the event prior to the availability of surplus funds provisions?**

21
22 No, a candidate committee may not use campaign funds to purchase a sponsorship package from
23 a political party, whether or not advertising benefits may be available, prior to the availability of

1 surplus funds. Ethics Rule 2.2 defines “contribution” as, “Any gift, subscription, loan, guarantee
2 or forgiveness of a loan, conveyance, advance, payment, distribution or deposit of money made
3 to, or anything of value given to, or an expenditure other than an independent expenditure made
4 on behalf of, a political party, political action committee or candidate committee, but shall not
5 include the value of services provided without compensation by an individual who volunteers
6 those services.” The Ethics Rules broadly define the term “contribution” to include all types of
7 payments and conveyances to political parties without any exceptions. Therefore, any payment to
8 a political party for the purchase of a sponsorship package is a contribution to the political party.
9

10 We refer to the reasoning set forth in our response to question one to reach a similar conclusion
11 here. We conclude that any payment made to a political party, even for sponsorship packages
12 where there may be some advertising benefit to the candidate, is a contribution to the political
13 party. Because Ethics Rule 2.48 specifically provides for the timing, limits, and conditions for a
14 candidate committee to make a contribution to a political party, contributions are only permitted
15 under the Ethics Rules pursuant to the surplus funds provision. Contributions to political parties
16 by candidate committees are not otherwise permitted in the Ethics Rules. In addition, we reiterate
17 our conclusion that contributions by a candidate committee to a political party are not ordinary
18 and necessary campaign expenses, operating expenses of the committee, or officeholder
19 expenses, and they are not permitted prior to the availability of surplus funds provisions in Ethics
20 Rule 2.48.
21

22 **IV. May a candidate committee make an expenditure to a political party committee**
23 **to purchase tangible goods or services benefitting the campaign, such as**

printing, postage, mailing lists, polling data, and other promotional opportunities prior to the availability of surplus funds provisions in Rule 2.48?

No, a candidate committee may not use campaign funds to purchase tangible goods or services from a political party prior to the availability of surplus funds. Ethics Rule 2.2 defines “contribution” as, “Any gift, subscription, loan, guarantee or forgiveness of a loan, conveyance, advance, payment, distribution or deposit of money made to, or anything of value given to, or an expenditure other than an independent expenditure made on behalf of, a political party, political action committee or candidate committee, but shall not include the value of services provided without compensation by an individual who volunteers those services.” The Ethics Rules broadly define the term “contribution” to include all types of payments and conveyances to political parties without any exceptions. Therefore, any payment to a political party for the purchase of tangible goods or services is a contribution to the political party.

We refer to the reasoning set forth in our response to question one to reach a similar conclusion here. We conclude that any payment made to a political party, even for tangible goods or services where there may be some benefit to the candidate, is a contribution to the political party. Because Ethics Rule 2.48 specifically provides for the timing, limits, and conditions for a candidate committee to make a contribution to a political party, contributions are only permitted under the Ethics Rules pursuant to the surplus funds provision. Contributions to political parties by candidate committees are not otherwise permitted in the Ethics Rules. In addition, we reiterate our conclusion that contributions by a candidate committee to a political party are not ordinary and necessary campaign expenses, operating expenses of the committee, or officeholder

1 expenses, and they are not permitted prior to the availability of surplus funds provisions in Ethics
2 Rule 2.48.

3
4 **V. May a candidate committee make an expenditure to a political party committee**
5 **to purchase space for advertising purposes at a political party event where space**
6 **for advertising may include a table and space to post and distribute campaign**
7 **materials, opportunities to recruit volunteers, an opportunity to address the**
8 **attendees at the event, and opportunities to solicit and receive contributions**
9 **prior to the availability of surplus funds provisions in Rule 2.48?**

10
11 No, a candidate committee may not use campaign funds to purchase space at an event from a
12 political party prior to the availability of surplus funds. Ethics Rule 2.2 defines “contribution” as,
13 “Any gift, subscription, loan, guarantee or forgiveness of a loan, conveyance, advance, payment,
14 distribution or deposit of money made to, or anything of value given to, or an expenditure other
15 than an independent expenditure made on behalf of, a political party, political action committee
16 or candidate committee, but shall not include the value of services provided without
17 compensation by an individual who volunteers those services.” The Ethics Rules broadly define
18 the term “contribution” to include all types of payments and conveyances to political parties
19 without any exceptions. Therefore, any payment to a political party for the purchase of space at
20 an event is a contribution to the political party.

21
22 We refer to the reasoning set forth in our response to question one to reach a similar conclusion
23 here. We conclude that any payment made to a political party, even for space at an event where

1 there may be some benefit to the candidate, is a contribution to the political party. Because
2 Ethics Rule 2.48 specifically provides for the timing, limits, and conditions for a candidate
3 committee to make a contribution to a political party, contributions are only permitted under the
4 Ethics Rules pursuant to the surplus funds provision. Contributions to political parties by
5 candidate committees are not otherwise permitted in the Ethics Rules. In addition, we reiterate
6 our conclusion that contributions by a candidate committee to a political party are not ordinary
7 and necessary campaign expenses, operating expenses of the committee, or officeholder
8 expenses, and they are not permitted prior to the availability of surplus funds provisions in Ethics
9 Rule 2.48.

10
11 **VI. If the answer to question 1, 2, 3, 4, or 5 is yes, are such expenditures considered**
12 **contributions and, if so, what are the contribution limits?**

13
14 We concluded in our responses to questions 1-5 that each expenditure is a contribution; however,
15 we determined such expenditures are not permissible outside of the surplus funds provision of
16 Ethics Rule 2.48. To reiterate, Ethics Rule 2.2 broadly defines “contribution” as any payment
17 without exception. It follows that any payment to a political party by a candidate committee is a
18 contribution. Further, contributions by candidate committees to political parties are only
19 permissible under surplus funds provisions of Ethics Rule 2.48. Because the expenditures are
20 not permissible outside of surplus funds provisions we need not address the question of
21 contribution limits.
22

1 **VII. If the answer to question 6 is yes, are these contributions allowed by Rule 2.43,**
2 **which allows candidate committee funds to “be used to make ordinary and**
3 **necessary campaign expenses” or Rule 2.44, which allows candidate committee**
4 **funds to be used for “officeholder expenses”?**

5
6 As discussed in our responses to the previous questions, any payment to a political party by a
7 candidate committee is a contribution because the term “contribution” is broadly defined to
8 include any payment without exception. We also concluded in our previous responses that
9 contributions by a candidate committee to a political party are neither ordinary and necessary
10 campaign expenses nor office holder expenses. Contributions by candidate committees to
11 political parties are only permitted through the surplus funds provisions in Ethics Rule 2.48.
12 Therefore, we restate our conclusion that contributions of any kind by a candidate committee to a
13 political party are not ordinary and necessary campaign expenses or officeholder expenses.

14
15 **Therefore, it is the official opinion of the Ethics Commission:**

- 16 **1. Ethics Rule 2.2 broadly defines the term contribution to include any payment**
17 **without exception.**
- 18 **2. Any payment or expenditure to a political party by a candidate committee is a**
19 **contribution as defined in Ethics Rule 2.2.**
- 20 **3. Contributions by candidate committees to political parties are only permitted under**
21 **surplus funds provisions of Ethics Rule 2.48.**

- 1 **4. A candidate committee expenditure to purchase a ticket to a political party fund-**
2 **raising event is a contribution to the political party and is only permitted under**
3 **surplus funds provisions of Ethics Rule 2.48.**
- 4 **5. A candidate committee expenditure to purchase a ticket to a political party event**
5 **not designed as a fund-raising event is a contribution to the political party and is**
6 **only permitted under surplus funds provisions of Ethics Rule 2.48.**
- 7 **6. A candidate committee expenditure to a political party for a sponsorship package,**
8 **even where some advertising benefit to the candidate committee may exist, is a**
9 **contribution to the political party and is only permitted under surplus funds**
10 **provisions of Ethics Rule 2.48.**
- 11 **7. A candidate committee expenditure to a political party for tangible goods or services**
12 **is a contribution to the political party and is only permitted under surplus funds**
13 **provisions of Ethics Rule 2.48.**
- 14 **8. A candidate committee expenditure to a political party for advertising space at an**
15 **event is a contribution to the political party and is only permitted under surplus**
16 **funds provisions of Ethics Rule 2.48.**
- 17 **9. Candidate committee contributions to political parties are neither ordinary and**
18 **necessary campaign expenditures nor officeholder expenses as defined by Ethics**
19 **Rules 2.43 and 2.44.**