

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

HOUSE BILL NO. 1827

By: Reese

AS INTRODUCED

An Act relating to ethics; amending 74 O.S. 1991, Sections 4202 and 4217, as amended by Sections 3 and 25 of Enrolled House Joint Resolution No. 1077 of the 2nd Session of the 43rd Oklahoma Legislature (74 O.S. Supp. 1992, Sections 4202 and 4217), which relate to the Ethics Commission Act; modifying definition; prohibiting candidate committees from transferring campaign funds to other candidate committees; amending Section 46 of Enrolled House Joint Resolution No. 1077 of the 2nd Session of the 43rd Oklahoma Legislature, which relates to an exemption from certain campaign related requirements for 1992 candidates and ballot measure elections; modifying exemption; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 74 O.S. 1991, Section 4202, as amended by Section 3 of Enrolled House Joint Resolution No. 1077 of the 2nd Session of the 43rd Oklahoma Legislature (74 O.S. Supp. 1992, Section 4202), is amended to read as follows:

Section 4202. As used in the Ethics Commission Act:

1. "Act" means the Ethics Commission Act, Section 4200 et seq. of this title;

2. "Address" means mailing address unless otherwise specified;

3. "Affiliated organization" or "connected organization" means any organization which directly or indirectly establishes, administers or financially supports a committee;

4. "Anything of value" includes the following:

a. a pecuniary item, including money, or a bank bill or note,

b. a promissory note, bill of exchange, order, draft, warrant, check, or bond given for the payment of money,

c. a contract, agreement, promise, or other obligation for an advance, conveyance, forgiveness of indebtedness, deposit, distribution, loan, payment, gift, pledge, or transfer of money,

d. a stock, bond, note, or other investment interest in an entity,

e. a receipt given for the payment of money or other property,

f. a right in action,

g. a gift, tangible good, chattel, or an interest in a gift, tangible good, or chattel,

h. a loan or forgiveness of indebtedness,

i. a work of art, antique, or collectible,

j. an automobile or other means of personal transportation,

k. real property or an interest in real property, including title to realty, a fee simple or partial interest, present or future, contingent or vested in realty, a leasehold interest, or other beneficial interest in realty,

- l. an honorarium or compensation for services,
- m. a rebate or discount in the price of anything of value unless the rebate or discount is made in the ordinary course of business to a member of the public or the sale or trade of something for reasonable compensation that would ordinarily not be available to a member of the public,
- n. a promise or offer of employment, or
- o. any other thing of value that is pecuniary or compensatory in value to a person.

The term "anything of value" shall not include a campaign contribution properly received and reported, if reportable, as required by the Ethics Commission Act;

5. "Associated", when used with reference to an organization, means an organization in which an individual or a member of his or her immediate family is a director, officer, fiduciary, trustee, agent or partner or owns or controls, in the aggregate, at least two percent (2%) or a value of Five Thousand Dollars (\$5,000.00) of the outstanding equity;

6. "Ballot measure" means an initiative, referendum, state question or any proposition or measure submitted to voters for their approval at a statewide election;

7. "Business" means any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint stock company, receivership, trust, or any legal entity through which business is conducted for profit;

8. "Calendar quarter" means each three-month period of a calendar year, beginning on January 1, April 1, July 1 and October 1 of each year;

9. "Campaign" means and includes all activities for or against the election of a candidate to a specific state or local office for

a specific term or the passage or defeat of a ballot measure from the date of the first contribution, the making of the first expenditure, the filing of a declaration of candidacy or a public announcement of intent to seek such election, whichever is first;

10. "Candidate" means a person who seeks nomination or election to a state or county office. An individual is a candidate when the individual:

- a. has filed a declaration of candidacy for any public office with the Secretary of the State Election Board or the secretary of any county election board,
- b. is nominated as a substitute candidate pursuant to the provisions of Section 1-105 of Title 26 of the Oklahoma Statutes, or
- c. solicits or accepts contributions, makes expenditures or gives consent to an individual, organization or committee to solicit or accept contributions or make expenditures to secure election to any state or county office at any time, whether or not the office for which the individual will seek nomination or election is known when the solicitation is made, the contribution is accepted or the expenditure is made.

The term "candidate" shall include a person whose candidacy is unopposed, but shall not include any person who has withdrawn a declaration of candidacy;

11. "Candidate committee" means the committee, consisting of one or more persons who may be the candidate only, designated by a candidate to promote the candidate's candidacy and serve as the recipient of all contributions and the disbursing officer of all expenditures for the candidate;

12. "Charitable organization" means an organization described in Section 501(c)(3) of Title 26 of the United States Code, 26

U.S.C., Section 501(c) (3), as it currently exists or as it may be amended;

13. "Classified employee" means a state employee or a state employee on leave from employment who is under the jurisdiction of the Merit System of Personnel Administration as provided in the Oklahoma Personnel Act, Section 840.1 et seq. of this title;

14. "Commission" means the Ethics Commission;

15. "Committee" means a candidate committee, political action committee, political party, or organization;

16. "Compensation" means:

- a. an advance, conveyance, forgiveness of indebtedness, deposit, distribution, loan, payment, gift, or transfer of money or anything of value, or
- b. a contract, or other written obligation for an advance, conveyance, forgiveness of indebtedness, deposit, distribution, loan, payment, gift, or transfer of money, service, facility or thing of value or financial benefit which is received or is to be received in return for or in connection with services rendered or to be rendered.

The term "compensation" shall not include reimbursement of expenses if the reimbursement is paid at a daily rate by statute to public officers or public employees for meals, lodging or expenses or if the reimbursement does not exceed the amount actually expended for the expenses and is substantiated by an itemization of expenses;

17. "Contribution" means and includes:

- a. a gift, subscription, loan, guarantee or forgiveness of a loan, conveyance, advance, payment, distribution, or deposit of money or anything of value made to a committee or for influencing the results of an election, including a ballot measure election, or

reducing the debt of a candidate for election to state or county office,

- b. an expenditure paid to a committee and made by a person or committee, other than a candidate's committee, with the cooperation of, or in consultation with, a committee, a candidate, candidate committee, or candidate's treasurer or that is made in concert with, or at the request or suggestion of, a candidate, candidate committee, or candidate's treasurer,
- c. the difference between the payment to a person, other than a candidate or committee, of compensation for personal services or products to the candidate or committee, and the reasonable and customary rate charged by the person for like services or products when the candidate or committee has knowledge of the discounted services or products,
- d. anything of value accepted by a committee that is transferred from another committee or other source,
- e. the purchase of tickets for an event such as a meal, reception, rally, and a similar fundraising event of a committee,
- f. the candidate's own money used on behalf of that candidate's candidacy, or
- g. the granting of a discount or rebate:
  - (1) not extended to the public generally, or
  - (2) by a television or radio station not extended equally to all candidates for the same office.

The term "contribution" shall not include:

- a. a loan of money made in the ordinary course of business by a financial institution authorized to transact business in this state at terms and interest rates generally available to a member of the public

without regard to the recipient's status as a public officer or public employee or a candidate for state or local office by the institution,

- b. the value of services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate, candidate committee, organization, political action committee, ballot measure committee, political party or federal political committee,
- c. for purposes of the contribution limits set forth in Section 4216 of this title, the transfer of any funds by a political action committee to another political action committee, provided the committees have been established as provided by law and the transferring committee and the receiving committee have been established, directly or indirectly, and are administered or financially supported, directly or indirectly, by a common organization,
- d. any payment made or obligation incurred by a corporation, labor organization, membership organization, cooperative or corporation without capital stock for the establishment, administration, and solicitation of contributions to a separate segregated fund or political action committee to be utilized for political purposes,
- e. a payment made by an individual for the individual's own travel expenses on behalf of a committee if the payment is made with an understanding or agreement that the payment will be repaid to the individual,
- f. a payment made by an occupant of a residence or office for costs related to a meeting or fundraising event held in the occupant's residence or office if the

costs for the meeting or fundraising event do not exceed Five Hundred Dollars (\$500.00); provided, if the occupant hosts more than one (1) such event in an election cycle for the same beneficiary, all subsequent payments that exceed Five Hundred Dollars (\$500.00) in the aggregate shall be considered a contribution,

g. a communication by a corporation, labor organization or association aimed at its members, owners, stockholders, executive administrative personnel or their families, or

h. a tender of a contribution if the tender is expressly and unconditionally rejected and returned to the contributor within six (6) business days of receipt of the tender and is not used, including as collateral, or is transferred to the state as provided by law if the contribution is an anonymous contribution exceeding Two Hundred Dollars (\$200.00);

18. "Contributor" means and includes every person or committee who makes a contribution;

19. "Day" means calendar day, except that in instances where a report or other document is required to be filed with the Commission and the calendar day upon which such a report or document must be filed falls on a day other than a regular business day, any such report or document may be filed on the immediate next regular business day;

20. "Election" means a Primary, Run-off Primary, General, or Special Election in which a candidate or ballot measure is on the ballot;

21. "Election board" means the State Election Board in reference to candidates who file a declaration of candidacy with the State Election Board, or the appropriate county election board in



reference to candidates who file a declaration of candidacy with the county election board;

22. "Election cycle" means the period beginning the day after the General Election, up to and including the day of the following General Election, including a Primary or Runoff Primary Election or a Special Primary and the following Special General Election;

23. "Elective officer" means an individual elected to a state or county office or an individual who is appointed to fill a vacancy in an elective state or county office;

24. "Expenditure" means a purchase, payment, distribution, contribution, loan, advance, compensation, reimbursement, fee deposit, transfer of funds between committees or gift of money securement, or anything of value, made to influence the results of an election, or reduce the debt of a candidate for election to office.

An expenditure shall not include the following:

- a. a loan of money, made in the ordinary course of business, by a financial institution authorized to transact business in this state,
- b. a communication by a corporation, labor organization, or association aimed at its members, owners, stockholders, executive administrative personnel, or their families,
- c. uncompensated services provided by an individual volunteering the individual's time, or
- d.—a transfer of funds to another committee if such transfer is expressly and unconditionally rejected and returned to the person making the expenditure within six (6) business days of receipt of the transfer;

25. "Expenditures incurred" means an amount owed to a creditor for purchase of delivered goods or completed services;

26. "Family member" means an individual who is a spouse, parent, stepparent, stepchild, sibling, child, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandparent or grandchild of a public officer or public employee or is a member of a public officer's or public employee's household;

27. "Gift" means anything of value to the extent that consideration of equal or greater value is not received. Provided, the term "gift" shall not include:

- a. a campaign contribution,
- b. printed informational promotional material,
- c. material relating to an issue which is or may be the subject of legislation or official action,
- d. anything of value that:
  - (1) is not used, and
  - (2) no later than thirty (30) days after receipt, is returned to the donor or delivered to a charitable organization and is not claimed as a charitable contribution for federal income tax purposes,
- e. a gift, devise, or inheritance from a family member of the recipient, if the donor is not acting as the agent or intermediary for someone other than a person covered by this subparagraph,
- f. a plaque or trophy with a value that does not exceed One Hundred Fifty Dollars (\$150.00),
- g. reimbursement for actual expenses incurred by a state officer or state employee for travel, subsistence, hospitality, entertainment or other costs of attending and participating in a meeting, program, trade mission or other activity of any organization if:
  - (1) (a) the state officer or state employee serves on a panel or otherwise participates in the

meeting, program, trade mission or other activity,

(b) the purpose of such travel, subsistence, hospitality, entertainment or other expense is to serve, inform or educate the state officer or state employee, or

(c) the meeting, program, trade mission or other activity is related to economic development; and

(2) such reimbursement is paid from funds of the organization;

28. "Governmental entity" means any department, commission, authority, council, board, bureau, committee, legislative body, agency, public trust, or other establishment of the executive, legislative or judicial branch of the State of Oklahoma or political subdivision thereof. For purposes of rules promulgated by the Ethics Commission pursuant to Section 3 of Article XXIX of the Oklahoma Constitution, the term "governmental entity" shall not include entities of political subdivisions of the State of Oklahoma;

29. "Immediate family" means an unemancipated child residing in a person's household, a spouse of such person, or an individual claimed by such person or such person's spouse as a dependent for tax purposes;

30. "Income" means any money or thing of value received, or to be received as a claim on future services, whether in the form of a fee, salary, gift, expense, allowance, forbearance, forgiveness, interest, dividend, royalty, rent, capital gain, or any other form of recompense or any combination thereof; provided, the term "income" shall not include campaign contributions;

31. "Independent expenditure" means an expenditure made by a committee to advocate the election or defeat of a clearly identified candidate, or, taken as a whole and in context, expressly urges a

particular result in an election, but which is not made to, controlled by, coordinated with, requested by, or made upon consultation with a candidate, committee, or treasurer of a candidate or committee;

32. "In-kind contribution or expenditure" means goods or services provided to or by a person at no charge or for less than their fair market value;

33. "Legislation" means a bill, resolution, amendment, nomination or other matter pending in either house of the Legislature; any other matter which may be the subject of action by either house of the Legislature, including the introduction, consideration, passage, defeat, approval or veto of the matter; or any matter pending in or which may be the subject of action by a constitutional convention;

34. "Loan" means a transfer of money, property, guarantee, or anything of value in exchange for an obligation, conditional or not, to repay in whole or part;

35. "Lobbying", or any derivative of the word thereof, means promoting, opposing or attempting to influence any official action; but shall not include any person representing himself or a client in a professional capacity in a court proceeding or before any governmental entity;

36. "Local office" means all elective offices for which declarations of candidacy are filed with the secretary of any county election board;

37. "Ministerial action" means an action that a person performs in a prescribed manner which involves no discretionary judgment;

38. "Official action" means any judicial, executive, legislative or administrative action which shall include, but is not limited to, the promulgation of rules and regulations and the setting of rates;

39. "Organization" means a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, union, education or action group or committee or entity with two or more persons having a joint or common political interest;

40. "Participation" includes decision, approval, disapproval, recommendation, the rendering of advice or vote;

41. "Particular matter" includes a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, inquiry, investigation, charge, accusation, arrest, rulemaking or legislation;

42. "Party committee" means the generally recognized organization which, according to the bylaws of the political party, is responsible for the daily operation of the party at a state or local level;

43. "Person" means an individual, corporation, association, firm, partnership, labor union or labor organization, committee, club or other organization, or a group of persons who are voluntarily acting in concert;

44. "Political action committee" means a combination of at least two individuals, or a person other than an individual:

- a. with the primary or incidental purpose of:
  - (1) supporting or opposing a candidate or political party, except those required to file with the Federal Election Commission, or
  - (2) supporting or opposing a ballot measure, and
- b. which accepts contributions or makes expenditures aggregating at least Two Hundred Dollars (\$200.00) during a calendar year.

A political action committee shall not include a political party, party committee or candidate committee;

45. "Political party" means any political party so recognized for the purpose of having candidates appear on the ballot;

46. "Public employee" means a state or county employee;

47. "Public member" means a state officer appointed to a compensated or uncompensated part-time position on a state governmental entity. A public member shall not lose this status by receiving reimbursement of expenses or a per diem payment for services. The term "public member" shall not include:

- a. members of governmental entities which are advisory to the legislative, executive, or judicial branches of state government;
- b. Foster Care Review Board members appointed pursuant to Section 1116.2 of Title 10 of the Oklahoma Statutes;
- c. board members of guaranty associations created pursuant to state statute; and
- d. precinct inspectors, judges, clerks and counters;

48. "Public officer" means a state officer or an officer of any political subdivision of the state;

49. "Registered lobbyist" means a person required to register under the provisions of Section 4227 of this title and who is not exempt from registration under the provisions of Section 4228 of this title;

50. "Represent" or "representation" means any formal or informal attendance before, or any written or oral communication with, or the filing of documents with, any governmental entity on behalf of a person or organization, whether gratuitous or for compensation;

51. "Respondent" means a person against whom an affidavit or complaint alleging a violation of the Ethics Commission Act or rules of the Commission is filed or against whom an assessment of late filing fees is made;

52. "Source" means, with respect to a contribution or income, the entity from which such contribution or income is obtained; provided, the term "source" shall not include individual clients, customers or patients;

53. "State employee" means an elected or appointed officer or employee of any state governmental entity, except members of the House of Representatives or State Senate, and an employee, other than an adjunct professor, in the service of an institution of higher education comprising The Oklahoma State System of Higher Education;

54. "State office" means all elective offices for which declarations of candidacy are filed with the Secretary of the State Election Board;

55. "State officer" means an elected or appointed officer in a state governmental entity;

56. "Substantial financial interest" means an interest that could result in directly or indirectly receiving a substantial pecuniary gain or sustaining a substantial pecuniary loss as a result of ownership or interest in a business entity, or as a result of salary, gratuity or other compensation or remuneration from any person, partnership, organization, or association. The term "substantial financial interest" includes, but is not limited to, an ownership interest of five percent (5%) or more in a business enterprise or an interest in an entity from which dividends of One Thousand Dollars (\$1,000.00) or more were derived during the preceding calendar year; and

57. "Transfer" means the movement or exchange of anything of value between committees other than candidate committees.

SECTION 2. AMENDATORY 74 O.S. 1991, Section 4217, as amended by Section 25 of Enrolled House Joint Resolution No. 1077 of the 2nd Session of the 43rd Oklahoma Legislature (74 O.S. Supp. 1992, Section 4217), is amended to read as follows:

Section 4217. 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. Contributions and any interest income earned on said contributions which are not used in this manner within forty-eight (48) months of the date of the General Election which is intended to result in the final election of a single individual to the office at stake shall be disposed of as follows:

1. 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;

2. Donated to the campaign of ~~any other political candidate or~~ any political party officially recognized by the State Election Board;

3. Donated to a charitable organization; or

4. Retained by the candidate or candidate committee for use in a future election.

B. Any person who receives contributions for a campaign but does not file a declaration of candidacy for public office with the Secretary of the State Election Board or the secretary of any county election board, or any person who has withdrawn such declaration of candidacy, shall be governed by the provisions of this section.

C. Contributions accepted by any committee other than a candidate committee may not be converted by any person to any personal use and shall be used to defray any campaign expenditures and to further the committee's purposes. Such a committee with an



unexpended balance of funds not otherwise obligated for the payment of expenses incurred to further the committee's purposes shall designate how the surplus funds are to be distributed. Surplus funds of such committees may be donated to the General Revenue Fund of the State of Oklahoma, returned to the contributors pursuant to a formula approved by the committee or donated to another committee.

D. Contributions shall not be used for any purposes other than those provided for in this section.

E. No candidate committee may transfer funds to any other candidate committee.

SECTION 3. AMENDATORY Section 46 of Enrolled House Joint Resolution No. 1077 of the 2nd Session of the 43rd Oklahoma Legislature, is amended to read as follows:

Section 46. The provisions of Sections 15 through 29 and 34 of Enrolled House Joint Resolution No. 1077 of the 2nd Session of the 43rd Oklahoma Legislature and Section 2 of this act shall not be applicable to any candidate or ballot measure elections held in calendar year 1992.

SECTION 4. This act shall become effective September 1, 1993.

44-1-6305 PS