



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**JOHN L. HILL
ATTORNEY GENERAL**

March 21, 1975

The Honorable Mark W. White, Jr.
Secretary of State
Capitol Building
Austin, Texas 78711

Opinion No. H- 561

Re: Whether a contribution to
a candidate which is pledged
and received after the elec-
tion is a prohibited gift to a
public servant

Dear Secretary White:

You have requested our opinion concerning Chapter 36 of the Penal Code. Specifically, you ask whether the defense provided in section 36.10(4) is applicable to campaign contributions made after an election.

Section 36.10 provides in part:

It is a defense to prosecution under Section 36.07 (Compensation for Past Official Behavior), 36.08 (Gift to Public Servant), or 36.09 (Offering Gift to Public Servant) of this code that the benefit involved was:

. . .

(4) a contribution made under the election laws for the political campaign of an elective public servant when he is a candidate for nomination or election to public office.

The Election Code in article 14.08(h)(1)(iii), (h)(3) and (h)(5) contemplates post election contributions and provides for their reporting.

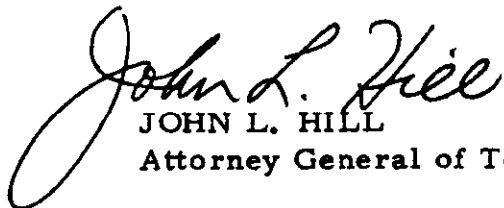
In our opinion, the Legislature intended to provide a defense to sections 36.07, 36.08 and 36.09 for campaign contributions which relate to a specific campaign.

Since the election laws provide for the reporting of post-election contributions, especially in the common instance of a campaign deficit, we believe it to be clear that section 36.10(4) was intended to allow such contributions. Accordingly, it is our opinion that the language "when he is a candidate" modifies the word "campaign" as contained in section 36.10(4), and merely limits the defense to contributions to a specific campaign, whether they be made before or after the election.

S U M M A R Y

Section 36.10(4) of the Penal Code provides a defense for campaign contributions which relate to a specific campaign, whether they be made before or after the election.

Very truly yours,


JOHN L. HILL
Attorney General of Texas

APPROVED:



DAVID M. KENDALL, First Assistant



C. ROBERT HEATH, Chairman
Opinion Committee