



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 274

August 11, 1995

Whether a contribution from a lawyer to a judicial candidate counts against the contribution limits for both the lawyer's spouse and the spouse's law firm; whether a lawyer's contribution to a judicial candidate counts against the contribution limits of a firm that hires him after the contribution. (AOR-305 and AOR-308)

The Texas Ethics Commission has been asked to consider questions about Senate Bill 94, the Judicial Campaign Fairness Act adopted by the 74th Legislature. Senate Bill 94 amends the Texas Election Code to include restrictions on the amount of contributions that certain judicial candidates and officeholders may accept from a person, as well as restrictions on the amount these candidates and officeholders may accept from individuals and entities affiliated with any one law firm.

Effective June 16, 1995,¹ the Election Code contains the following provisions:

Sec. 253.155. CONTRIBUTION LIMITS. (a) Except as provided by Subsection (c), a judicial candidate may not knowingly accept political contributions from a person that in the aggregate exceed the limits prescribed by Subsection (b) in connection with each election in which the candidate is involved.

....

Sec. 253.157. LIMIT ON CONTRIBUTION BY MEMBER OR GENERAL-PURPOSE COMMITTEE OF LAW FIRM. (a) A judicial candidate may not accept a political contribution in excess of \$50 from a person if:

- (1) the person is a member of a law firm or a general-purpose committee established or controlled by a law firm; and
- (2) the contribution when aggregated with all political contributions accepted by the candidate from other members of the law firm or from a general-purpose committee established or controlled by the law firm in connection with the election would exceed six times the applicable contribution limit under Section 253.155.

Act of June 16, 1995, S.B. 94, § 1, 74th Leg., R.S. (to be codified at Tex. Elec. Code §§ 253.155, 253.157).² Section 253.158(a), also added by Senate Bill 94, provides, "For purposes of Sections 253.155 and 253.157, a contribution by the spouse or child of an individual is considered to be a contribution by the individual." *Id.*

In light of these new provisions, the requestor poses the following hypothetical situation:

Lawyer John Doe, with the firm Jones & Jones, makes a \$1000 contribution to Judge Dread. That contribution counts against Mr. Doe's personal contribution limit as well as Jones & Jones' limit.

Lawyer John Doe has a spouse, Lawyer Jane Doe. Jane Doe is with the firm of Smith & Smith. Does John Doe's contribution count against Lawyer Jane Doe's personal contribution limit? And,

more importantly, does John Doe's contribution count against Smith & Smith's contribution limit?

In accordance with Election Code section 253.158, John Doe's contribution to Judge Dread counts against both the amount Jane Doe may give to Judge Dread and the amount that members of Smith & Smith may give to Judge Dread in connection with the election. Likewise, JaneDoe's contribution to Judge Dread counts against both John Doe's contribution limit and Jones & Jones' aggregate contribution limit to Judge Dread.³

The requestor also proposes this hypothetical:

Lawyer Sam Houston, with the firm of Houston & Houston, has made his maximum allowable contribution to Judge Dredd and his firm has also reached their maximum allowable limit. Can lawyer Sam Houston still make a \$50 contribution to Judge Dredd?

This question addresses the relationship between sections 253.155 and 253.157, which set the limits for contributions from a "person" and those from a "member or general-purpose committee of [a] law firm." Section 253.157 does not permit an individual to exceed the individual contribution limits set by section 253.155. If an individual has made his maximum allowable contribution to a judicial candidate under Election Code section 253.155, he may not make further contributions to the candidate in connection with that election.⁴

The requestor's final questions are as follows:

Lawyer Steve Austin, with the firm of Travis & Bowie, makes a \$2500 contribution to Judge Dredd and other members of the firm contribute \$27,500. Subsequent to that contribution, Mr. Austin leaves the firm. He moves to the firm of Lamar & de Zavala. Does Austin's \$2500 contribution now count against Lamar & de Zavala's contribution limit? And if so, can the lawyers of Travis & Bowie now make an additional \$2500 contribution?

The requestor posits that Judge Dredd is a state district judge in a judicial district with a population of more than 1 million. Such a candidate may not accept more than \$5000 from a person in connection with an election, and may not accept more than \$50 from a member or general-purpose committee of a law firm if the contribution would cause the total accepted from members and general-purpose committee of that law firm to exceed \$30,000. Elec. Code §§ 253.155, 253.157 (as added by SB-94).

Election Code section 253.157 aggregates contributions made by members of the same law firm and subjects them to an overall limit for the firm. In other words, members of the same law firm are treated as a unit for purposes of the law. Accordingly, contributions by an individual member of a law firm count against the firm's limit if they were made while the individual was a member of the firm. The contributions Steve Austin made while working for Travis & Bowie count against Travis & Bowie and against Austin's personal limit. They are not "transferred" to his new firm when he changes jobs. If Steve Austin makes further contributions to Judge Dredd while employed by his new firm, Lamar & de Zavala, those contributions will count against Lamar & de Zavala's limits and against his personal contribution limit.

SUMMARY

Under the Judicial Campaign Fairness Act, a contribution by the spouse of an individual is considered to be a contribution by the individual. A judicial candidate may not accept from a member of a law firm political contributions exceeding the maximum amount prescribed in Election Code section 253.155. If a member of a law firm moves from one firm to another, political contributions made by the member count toward the contribution limits only of the law firm of which he was a member when he made the contributions.

¹ Section 10 of Senate Bill 94 provides that the amendments to chapter 253 take effect "immediately." The governor signed the bill into law on June 16, 1995. Other provisions not relative to this opinion have a different effective date.

² Election Code section 253.157(e) defines a "member" of a law firm as "a partner, associate, shareholder, employee, or person designated 'of counsel' or 'of the firm.'"

³ This opinion interprets title 15 of the Election Code as amended by the 74th Legislature and does not consider any constitutional issues that may be raised by the provisions discussed.

⁴ Instead of increasing the maximum an individual is allowed to contribute, section 253.157 in some cases greatly reduces an individual's contribution limit. Once a law firm has reached its contribution limit under section 253.157, a future contribution by a member of that law firm to the same candidate in connection with the election is restricted to \$50, despite the higher contribution limit set by section 253.155.