



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 276

September 8, 1995

Whether a judge may use political contributions to pay the costs of defending a lawsuit. (AOR-310)

A district judge has asked the Ethics Commission whether he may use political contributions to pay the costs of defending a lawsuit. The lawsuit raises a claim that the judge, acting as an attorney before he became a judge, failed to account to the plaintiff for a settlement made in connection with a collision. The judge states that he never represented the plaintiff and states that, in his view, the plaintiff sued him and another judge solely to gain the publicity that attends a lawsuit against a public figure.

Title 15 of the Election Code provides that a person may not convert a political contribution to personal use. Elec. Code § 253.035(a). "Personal use" means "a use that primarily furthers individual or family purposes not connected with the performance of duties or activities as a candidate for or holder of a public office." *Id.* § 253.035(d). "Personal use" does not include the use of political contributions for defending a civil action brought against a person "in his status as a candidate or officeholder." *Id.* § 253.035(i).

As a general rule, it would be impermissible for an officeholder to use political contributions to pay the expenses of a lawsuit alleging malfeasance by the officeholder in a private professional capacity since such a suit would not be brought against the person in his status as an officeholder. In this case, however, the judge alleges that the lawsuit was brought solely because of his status as an officeholder even though on its face the lawsuit purports to address the judge's actions as a private attorney.

The Ethics Commission cannot in an advisory opinion resolve a disputed fact question, and therefore cannot in this instance determine whether the lawsuit in question was filed solely because of the requestor's status as a judge. If the judge, however, determines in good faith that a groundless lawsuit has been filed against him solely because of his status as a judge, the judge may use political contributions to pay the expenses of defending the lawsuit.

SUMMARY

If a judge determines in good faith that a groundless lawsuit has been filed against him solely because of his status as a judge, the judge may use political contributions to pay the expenses of defending the lawsuit.