



TEXAS ETHICS COMMISSION



****Overruled, Modified, Clarified, or Superseded****

ETHICS ADVISORY OPINION NO. 302

February 9, 1996

Whether the primary election and the general election are considered separate elections for purposes of the expenditure and reimbursement limits in the Judicial Campaign Fairness Act. (AOR-337)

The Texas Ethics Commission has been asked whether the primary election and the general election are considered separate elections for purposes of the limits on expenditures and reimbursement of personal funds in the Judicial Campaign Fairness Act.

The Judicial Campaign Fairness Act, adopted by the legislature in 1995 and incorporated in title 15 of the Election Code, provides that a judicial candidate subject to the act may not reimburse himself from political contributions for political expenditures made from personal funds in amounts that exceed certain limits "for each election in which the person's name appears on the ballot." Elec. Code § 253.162(a). The Election Code also prohibits a judicial candidate who has agreed to comply with the voluntary expenditure limits of the Judicial Campaign Fairness Act from spending more than a specified amount for "each election in which the candidate is involved." *Id.* § 253.168. The requestor asks whether the primary and general elections are considered separate elections for purposes of these provisions.

We find nothing in the Election Code to suggest that the term "election" in sections 253.162 and 253.168 denotes an election "cycle" rather than a single election. Under the Election Code, an election may be a "primary election," a "general election," or a "special election." *Id.* § 1.005(6), (14), (18). Because the Judicial Campaign Fairness Act imposes limits on expenditures and reimbursements in connection with "each election" in which the candidate is involved, it is clear that a judicial candidate is subject to separate limits for each election in which he is involved. Thus, if the applicable limit on reimbursement is \$5000, a candidate would be able to reimburse himself for \$5,000 of expenditures in connection with a primary in which his name is on the ballot, \$5,000 for a runoff in which his name is on the ballot, and an additional \$5,000 for the general election if his name is again on the ballot.¹ Similarly, separate expenditure limits apply to a primary election, a primary runoff election, and a general election.²

SUMMARY

For purposes of the limits on expenditures and reimbursement of personal funds in the Judicial Campaign Fairness Act, the primary election and the general election are considered separate elections.

¹ We note that a candidate has no right to "carry over" the portion of the limits not used in connection with an election. In other words, a candidate subject to a \$5000 reimbursement limit in connection with a primary election might, for example, reimburse himself only \$2000. The candidate would still be limited to \$5000 in reimbursement in the next election, not \$8000.

² We note that the provisions regarding a candidate's eligibility for reporting under the modified reporting schedule operate in a similar fashion. Those provisions allow a candidate to avoid the requirement to file pre-election reports if the candidate does not accept

contributions or make political expenditures (other than expenditures for a filing fee) of more than \$500 "in the election." Elec. Code ch. 254, subch. G. The commission has interpreted subchapter G as making modified reporting available to a candidate who does not intend to accept more than \$500 in contributions or make more than \$500 in expenditures "in connection with any election in an election cycle." 1 T.A.C. § 20.217. The rules define an election cycle as "a single election and any related primary or runoff election." 1 T.A.C. § 20.1.