



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 329

June 14, 1996

Whether a judgment rendered in favor of a prevailing candidate in a lawsuit authorized under section 253.131 of the Election Code is "reportable activity" under section 251.001(11) of the Election Code; whether a donation of legal services to pursue such a lawsuit is reportable. (AOR-367)

The Texas Ethics Commission has been asked whether a judgment rendered in favor of a prevailing candidate in a lawsuit authorized under section 253.131 of the Election Code is a "reportable activity" under section 251.001(11) of the Election Code. Section 253.131 provides that a person who knowingly makes a campaign expenditure or accepts a contribution in violation of chapter 253 of the Election Code is liable for damages of twice the value of the unlawful contribution or expenditure, plus reasonable attorney's fees incurred in the lawsuit. Elec. Code § 253.131(a), (d). If the contribution or expenditure is in support of a candidate, each opposing candidate whose name appears on the ballot is entitled to recover damages. If the contribution or expenditure is in opposition to a particular candidate, that candidate may recover damages. *Id.* § 253.131(c), (d).

An award of damages to a candidate under this provision is not reportable activity under title 15 of the Election Code. "Reportable activity" is defined as "a political contribution, political expenditure, or other activity required to be reported" under title 15. Elec. Code § 251.001(11). A political contribution may be either a campaign contribution or an officeholder contribution. *Id.* § 251.001(5). A campaign contribution is "a contribution to a candidate . . . that is offered or given *with the intent that it be used in connection with a campaign for elective office* or on a measure." *Id.* § 251.001(3) (emphasis added). An award of damages to a candidate in a lawsuit brought under Election Code section 253.131 is not a contribution given with the intent to aid the recipient's campaign; nor is the award of damages reportable by the recipient under any other provision of title 15.¹

The requestor also asks whether a candidate who brings a lawsuit under Election Code section 253.131 is required to report the donated services of legal counsel as an in-kind contribution. The requestor stipulates that the attorney would not be compensated by anyone for his or her work. An offer of free legal services for the purpose of pursuing a lawsuit under section 253.131 is a contribution given with the intent that it be used in connection with a campaign. Section 254.033 of the Election Code, however, provides that "[a] political contribution consisting of an individual's personal service is not required to be reported . . . if the individual receives no compensation for the service." The value of an attorney's legal services for a lawsuit under Election Code section 253.131 is therefore not reportable if the attorney receives no compensation for the services.

SUMMARY

An award of damages to a candidate in a lawsuit brought under Election Code section 253.131 is not a contribution given with the intent to aid the recipient's campaign; nor is the award of damages reportable by the recipient under any other provision of title 15.

An individual who provides free legal services to a candidate who brings a lawsuit under section 253.131 makes a non-reportable political contribution, since the contribution of an individual's personal service is not required to be reported.

¹ We note, however, that a candidate or political committee ordered to pay damages pursuant to a lawsuit initiated under section 253.131 would be required to report the payment of the damages as a political expenditure. The term "political expenditure" includes "an expenditure made by any person in connection with a campaign for an elective office or on a measure." Id. § 251.001(7), (10). Damages assessed and paid for unlawfully making campaign expenditures or accepting campaign contributions are expenditures in connection with a campaign for elective office. See [Ethics Advisory Opinion No. 206](#) (1994) (payment of late filing penalty is reportable as political expenditure).