



# TEXAS ETHICS COMMISSION



**\*\*Overruled, Modified, Clarified, or Superseded\*\***

## ETHICS ADVISORY OPINION NO. 339

*August 16, 1996*

*Questions about the application of the Judicial Campaign Fairness Act to individuals seeking to fill vacancies in judicial offices. (AOR-377)*

The Texas Ethics Commission has been asked two different questions about the application of the Judicial Campaign Fairness Act to individuals seeking to fill vacancies in judicial offices.

The first request letter describes a situation in which an appellate judge submitted a resignation letter in the summer of 1996 and stated in the resignation letter that the resignation was to take effect in January 1997, two years before the end of the term for which the judge was elected. The unexpired term will be filled at the 1996 November election. Elec. Code §§ 201.023, 202.002. The question raised here is about the period during which the candidates seeking election to fill the unexpired term may accept political contributions. *See id.* § 202.006 (regarding parties' nomination of candidates in election to fill unexpired term).

The Judicial Campaign Fairness Act limits the period during which candidates for certain judicial offices may accept political contributions. *Id.* § 253.153; *see also id.* § 253.151 (offices covered by Judicial Campaign Fairness Act). For candidates seeking to fill unexpired terms, the fundraising period begins "the later of the 210th day before the date an application for a place on the ballot or for nomination by convention for the office is required to be filed or the date a vacancy in the office occurs." *Id.* § 253.153(a)(1)(B). Thus, in the situation at hand the fundraising period began on the day the vacancy occurred.

That seemingly straightforward answer is complicated in this situation, however, by the fact that there is litigation about the date the vacancy occurred for purposes of determining whether the Governor has authority to make an interim appointment to the office. The issue in dispute in the litigation, however, is not germane to the calculation of the date on which candidates seeking to fill the unexpired term may begin accepting political contributions.

It is undisputed in the litigation that, for purposes of the Election Code provisions governing elections to fill vacancies in office, a vacancy occurs on the date provided by section 201.023 of the Election Code:

If an officer submits a resignation, *whether to be effective immediately or at a future date*, a vacancy occurs on the date the resignation is accepted by the appropriate authority or on the eighth day after the date of its receipt by the authority, whichever is earlier. [Emphasis added.]

The date on which the vacancy occurs, as determined by that provision, triggers the process that leads up to an election to fill an unexpired term. It makes sense that the same date should trigger the right of candidates in that election to accept political contributions in connection with that election. In contrast, the date on which the Governor may make an appointment to fill an office is of no direct relevance to the period during which candidates may raise funds. We conclude, therefore, that for purposes of calculating the fundraising period under section 253.153(a)(1)(B) of the Election Code, a vacancy occurs on the date provided by section 201.023 of the Election Code.

The second question raised here has to do with the date on which the fundraising period ends for a candidate seeking election to fill an unexpired term. Section 253.153(a)(2) of the Election Code sets out two possible ending dates for the fundraising period under the Judicial Campaign Fairness Act. The period ends on the 120th day after the date of either

(A) the general election for state and county officers, if the candidate or officeholder has an opponent in the general election; or

(B) . . . the primary election, if the candidate or officeholder does not have an opponent in the general election.

*Id.* § 253.153(a)(2).<sup>1</sup> A question has been raised about the ending date in a situation not expressly addressed by the statute. A vacancy in a judicial office occurred in June 1996, and the vacancy will be filled at the November general election. One party has already nominated a candidate. That candidate does not yet have an opponent and may not know until early September whether he will have an opponent. *Id.* §§ 145.037, 202.006.

Neither of the ending dates set out in section 253.153 is tailored to the situation described here. The ending date provided by section (a)(2)(B) is inappropriate since that ending date is clearly meant to apply to a candidate who participated in the March primary and is unopposed in the November election. Further, the ending date under that provision was July 10, 1996, soon after the vacancy in question occurred (and possibly before the occurrence of other vacancies that could be filled at the November general election). The ending date set out in section (a)(2)(A)--120 days after the general election--makes more sense in this situation except that it applies only to a candidate who is opposed in the November general election; the candidate in question here does not know whether he will be opposed in the November election.

Although the statute does not specifically address the situation at hand, the provision setting out the dates for fundraising periods offers insight into the legislative intent underlying the Judicial Campaign Fairness Act. Although the act restricts the period during which judicial candidates and officeholders may accept political contributions, it does provide ample time for raising funds. Even a candidate unopposed in both the primary and the general election would have more than a year in which to raise funds, from June of the calendar year before the primary until July of the following year. *See id.* § 253.153. Consequently, we think it is consistent with other statutory provisions to conclude that the candidate in question here<sup>2</sup> may accept political contributions during a period that begins on the date the vacancy occurs and that ends on the 120th day after the November general election, regardless of whether the candidate has an opponent in the November election.

## SUMMARY

For purposes of calculating the fundraising period under section 253.153(a)(1)(B) of the Election Code, a vacancy occurs on the date provided by section 201.023 of the Election Code.

A judicial candidate nominated under section 202.006 of the Election Code to fill a vacancy in an unexpired term at the November general election may accept political contributions until 120 days after the November general election, regardless of whether the candidate has an opponent in the November election.

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<sup>1</sup> There are special rules applicable to contributions to cover election contest expenses and to candidates with write-in opponents. Elec. Code § 253.153(b), (c). Those rules are not relevant here.

<sup>2</sup> This opinion would not apply to a candidate seeking to fill an unexpired term if the candidate is nominated by party primary or by party convention. See generally *id.* §§ 202.004-.006.