



TEXAS ETHICS COMMISSION



****Overruled, Modified, Clarified, or Superseded****

ETHICS ADVISORY OPINION NO. 351

November 22, 1996

Whether incumbent justices re-elected to the Supreme Court and the Court of Criminal Appeals and justices newly elected to those courts in November 1996 may accept political contributions during the period beginning on December 15, 1996, and ending on March 5, 1997. (SP-6)

The Texas Ethics Commission has been asked to consider whether incumbent justices re-elected to the Supreme Court and the Court of Criminal Appeals and justices newly elected to those courts in November 1996 may accept political contributions during the period beginning on December 15, 1996, and ending on March 5, 1997.

In 1981 the legislature adopted a moratorium on contributions to certain officeholders during a period beginning 30 days before a regular legislative session and ending on the last day of the session. Acts 1981, 67th Leg., ch. 873, § 2, at 3325 (eff. Sept. 1, 1981). The substance of the provision is now in section 253.034 of the Election Code. The moratorium applies to individuals holding statewide offices and also to individuals elected to statewide offices in the November 1996 election. Elec. Code §§ 251.002, 253.034; see also id. § 1.005(19) (defining "statewide office" as office voted on statewide.) Therefore, by its terms, the moratorium applies to incumbent justices re-elected to the Supreme Court and the Court of Criminal Appeals as well as to individuals newly elected to those courts in November 1996. The questions raised here are whether section 253.153 of the Election Code, which the legislature enacted in 1995 as part of the Judicial Campaign Fairness Act, conflicts with section 253.034 as to justices and justices-elect of the Supreme Court and the Court of Criminal Appeals and, if so, which provision prevails. We conclude that there is a conflict and that section 253.153 prevails over section 253.034 as to re-elected justices and justices-elect of the Supreme Court and the Court of Criminal Appeals.

The 1995 Judicial Campaign Fairness Act imposes a number of campaign finance restrictions on holders of and candidates for certain judicial offices, including a limit on the time during which such officeholders and candidates may accept political contributions. Id. § 253.153. A judge or judicial candidate covered by the Judicial Campaign Fairness Act may accept political contributions only during the period beginning 210 days before an application for a place on the ballot or nomination by convention is required for an election to the office for a full term.¹

Id. § 253.153(a)(1)(A). The ending date under section 253.153 for a candidate who has an opponent in the general election is 120 days after the general election. Id. § 253.153(a)(2)(A); see also id. § 253.153(a)(2)(B) (ending dates for other candidates).

Under the section 253.034 moratorium the last day on which a statewide officeholder or officeholder-elect may accept contributions is December 14, 1996. Under section 253.153, a re-elected justice or a justice-elect of the Supreme Court or Court of Criminal Appeals who had an opponent in the November 1996 general election may accept contributions until March 5, 1997. We recognize that sections 253.034 and 253.153 are not in absolute conflict since it is possible to comply with both provisions. In our opinion, however, there is a conflict in the design of the two provisions. *Porter v. State*, 806 S.W.2d 316 (Tex. App.—San Antonio 1991, no writ) (when two statutes govern same subject matter, they are not "in pari materia" if they have different objects, intend to cover

different situations, and are not intended to be considered together). Section 253.034 was enacted in a context in which officers and officers-elect would forego fundraising during the section 253.034 moratorium but would be able to raise funds as soon as the moratorium ended. Under section 253.153, justices and justices-elect of the Supreme Court and the Court of Criminal Appeals will not be able to raise funds after the section 253.034 moratorium ends. Indeed, because they serve six-year terms, they will not be able to raise funds again for four years. Therefore, because of the enactment of section 253.153, the section 253.034 moratorium would have a much harsher effect on such justices and justices-elect than on the other officers and officers-elect covered by the section 253.153 moratorium.² Consequently, we find sections 253.034 and 253.153 to be in conflict as to those justices and justices-elect. Because section 253.153 was enacted later than section 253.034 and because it is more specific in its application to judicial candidates and officers, we conclude that section 253.153 prevails over section 253.034 as to justices and justices-elect of the Supreme Court and the Court of Criminal Appeals. Gov't Code §§ 311.025(a) (statute latest in date of enactment prevails), 311.026 (special or local provision prevails over general provision). Therefore, justices and justices-elect of the Supreme Court and the Court of Criminal Appeals who had an opponent in the November 1996 general election may accept political contributions in accordance with the Judicial Campaign Fairness Act until March 5, 1997.

SUMMARY

Justices and justices-elect of the Supreme Court and the Court of Criminal Appeals who had an opponent in the November 1996 general election may accept political contributions in accordance with the Judicial Campaign Fairness Act until March 5, 1997.

¹ For an election for an unexpired term, the period begins either the 210th day before the date an application for a place on the ballot or for nomination by convention is required to be filed or the day the vacancy occurs, whichever is later. Elec. Code § 253.153(1)(B).

² A statute must be construed in a manner that will not lead to a foolish or absurd result when another alternative is available. *City of Wilmer v. Laidlaw Waste Sys. (Dallas), Inc.*, 890 S.W.2d 459, 465 (Tex. App.—Dallas 1994), *aff'd*, 904 S.W.2d 656 (Tex. 1995).