



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 399

June 12, 1998

Whether an individual who lost a primary election for the office of district court judge may donate surplus campaign contributions to a candidate for a nonjudicial office. (AOR-437)

An individual who lost a primary election for the office of district court judge has asked whether he may donate his surplus campaign contributions to a candidate for a nonjudicial office.

Under the Texas campaign finance law, candidates for nonjudicial offices in Texas are permitted to donate surplus campaign contributions to candidates for other offices. *See* Elec. Code § 254.204(a)(2); [Ethics Advisory Opinion No. 47](#) (1992). Candidates for certain judicial offices,¹ however, are subject to the following restriction:

A judicial candidate or officeholder or a specific-purpose committee for supporting or opposing a judicial candidate or assisting a judicial officeholder may not use a political contribution to make political contributions that in the aggregate exceed \$100 in a calendar year to a candidate or officeholder.

Elec. Code § 253.1611(a). The requestor is not a judicial officeholder, and he was unsuccessful in his bid to become a political party's nominee for a judicial office. The question here is whether the requestor nonetheless remains a "judicial candidate" subject to the restriction set out above.

For purposes of the provision in question a "judicial candidate" is a person who knowingly and willingly takes affirmative action for the purpose of gaining nomination or election to a judicial office listed in Election Code section 253.151 or for the purpose of satisfying financial obligations incurred by the person in connection with the campaign for nomination or election. *See id.* § 251.001(1). The filing of a campaign treasurer appointment is cited as an example of an affirmative act that makes an individual a candidate. *Id.* § 251.001(1)(A). As long as an individual has a campaign treasurer appointment on file, he or she may accept campaign contributions in connection with his or her candidacy, even if the applicable election has already occurred. *See id.* § 253.031(a). We conclude, therefore, that the requestor remains a judicial candidate as long as he has a campaign treasurer appointment on file. *See generally id.* § 254.065 (for reporting purposes, an individual remains a candidate until he or she files a final report).

An individual who has filed a final report (and has not reappointed a campaign treasurer) is not a candidate. By its terms, Election Code section 253.1611 does not apply to a *former* judicial candidate.

SUMMARY

An individual is a candidate as long as the individual has a campaign treasurer appointment on file. An individual who has filed a final report (and has not reappointed a campaign treasurer) is not a candidate.

Election Code section 253.1611 does not apply to a *former* judicial candidate.

¹ The restriction applies to candidates for the following offices: chief justice or justice, supreme court; presiding judge or judge, court of criminal appeals; chief justice or justice, court of appeals; district judge; judge, statutory county court; or judge, statutory probate court. Elec. Code § 253.151.