



# TEXAS ETHICS COMMISSION



**\*\*Overruled, Modified, Clarified, or Superseded\*\***

## ETHICS ADVISORY OPINION NO. 406

*August 14, 1998*

*Regarding the application of the Judicial Campaign Fairness Act in a situation in which an individual was selected in June to take the place of the deceased winner of a party primary. (AOR-447)*

The Texas Ethics Commission has been asked about the application of the Judicial Campaign Fairness Act to a candidate who was selected in June to take the place of the deceased winner of a party primary.

The Judicial Campaign Fairness Act limits the period during which candidates for certain judicial offices may accept political contributions. Elec. Code § 253.153; *see also id.* § 253.151 (offices covered by Judicial Campaign Fairness Act). For candidates seeking election in 1998 the fundraising period began on June 6, 1997. The ending date varies according to a candidate's status after the primary election. As a general rule, the fundraising period ends 120 days after the primary election for a candidate who does not have an opponent in the general election. *Id.* § 253.153(a)(2). Under that rule, the fundraising period ended on July 8, 1998, for a judicial candidate who will be unopposed in the November 1998 election. The question raised here is whether that rule applies to a judicial candidate who was selected on June 6, 1998, as his party's replacement for the deceased winner of the party's primary.<sup>1</sup> *See generally id.* § 145.036 (filling vacancy in nomination).

In [Ethics Advisory Opinion No. 339](#) (1996), we considered a similar situation. In that case a sitting judge had died in June 1996. On the date of the opinion-August 16, 1996-one party had selected a candidate to seek election to the unexpired term in the November general election. It was uncertain-and might remain so until September-whether the candidate would have an opponent in the November election. In concluding that the candidate who had been nominated could raise funds until 120 days after the November election, regardless of whether the candidate drew an opponent, we wrote:

Although the statute does not specifically address the situation at hand, the provision setting out the date 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 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.

[Ethics Advisory Opinion No. 339](#), at 3 (1996) (footnote omitted). We think that reasoning applies equally to this situation.<sup>2</sup> We conclude, therefore, that a judicial candidate named in June to fill a vacancy in a nomination may accept political contributions until 120 days after the November general election, regardless of whether the candidate has an opponent in the November election.

## SUMMARY

A judicial candidate named in June to fill a vacancy in a nomination 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> A sitting judge who was running unopposed in the primary died in February. Because the deadline for replacing a deceased candidate on the primary election ballot had passed, the deceased judge won the primary election. *See* Elec. Code § 172.054 (extended primary filing deadline after death of candidate).

<sup>2</sup> One difference between our earlier opinion and the situation at hand is that the candidate who requested the earlier opinion had been nominated under Election Code section 202.006 to seek election to the remaining two years of an unexpired term, whereas the candidate requesting the present opinion has been nominated under Election Code section 145.036 to seek a full term. We do not find that difference relevant to the question about the applicable fundraising period. The other difference is that in the earlier opinion it was possible that the requestor would have an opponent in the November election. Because we stated that our conclusion applied regardless of whether the candidate ultimately drew an opponent, we do not think that difference is a basis for reaching a different conclusion in this situation.