



TEXAS ETHICS COMMISSION



****Overruled, Modified, Clarified, or Superseded****

ETHICS ADVISORY OPINION NO. 418

August 13, 1999

Application of the campaign finance law to a district judge who is running for justice of a court of appeals. (AOR-461)

The Texas Ethics Commission has been asked to consider several questions about the application of the campaign finance law to a district judge who is running for justice of a court of appeals.

Candidate's Use of Surplus Political Contributions

The first question is whether the judge may use funds raised in connection with a 1998 campaign for district judge in his current campaign for justice of a court of appeals. The request letter states that contributions from the current campaign have been placed in an account that contains surplus contributions from the 1998 campaign.

At the outset it is important to emphasize that the Texas campaign finance law does not regulate accounts. The law does not require that political contributions¹ be kept in an account separate from other funds or even that they be kept in an account at all. *See generally Ethics Advisory Opinion No. 230* (1994) at 1-2. Therefore, even if a candidate chooses to keep contributions from different campaigns in separate accounts, a transfer from one of those accounts to the other is not a contribution or expenditure for purposes of the campaign finance law and is not reportable on a campaign finance report. *Id.* at 2-3.

Although the campaign finance law does not place restrictions on how a candidate or officeholder maintains political contributions, the campaign finance law does place several restrictions on how a candidate or officeholder may use political contributions.

One restriction prohibits the conversion of political contributions to personal use. Elec. Code § 253.035. "Personal use" is defined for purposes of this prohibition as "a use that primarily furthers individual or family purposes not connected with the performance of duties or activities as a candidate for or holder of a public office." *Id.* § 253.035(d). The use of contributions accepted in connection with a campaign for one office to make expenditures in connection with a campaign for another office is not a personal use.

Another restriction is that political contributions raised in a campaign for a judicial office may not be used in a campaign for a nonjudicial office.² *Id.* § 253.161. That restriction would not apply in this instance because the contributions in question were raised in connection with a campaign for the office of district judge and would be used in connection with a campaign for the office of justice of a court of appeals. Both offices are judicial offices.

Therefore, a candidate for justice of a court of appeals may use surplus funds from a campaign for district judge in connection with a campaign for justice of a court of appeals.

Transfers between Specific-Purpose Political Committees

The issue of using contributions raised in a campaign for district judge in a later campaign for a different judicial office would be somewhat more complicated if the candidate had created separate specific-purpose political committees to support his separate campaigns.³ For most purposes, a specific-purpose political committee supporting a candidate has an identity separate from the candidate, and transfers from the candidate to the committee are reportable as contributions to the committee. [Ethics Advisory Opinion No. 271](#) (1995). Similarly, a transfer from one specific-purpose political committee to another is reportable as an expenditure on the donor committee's report and as a contribution on the recipient committee's report.

In 1997, the legislature adopted the following provisions, which restrict contributions from judicial candidates and judicial specific-purpose political committees to other candidates and political committees:

- (a) 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.
- (b) A judicial candidate or a specific-purpose committee for supporting or opposing a judicial candidate may not use a political contribution to make political contributions to a political committee in connection with a primary election.
- (c) A judicial candidate or a specific-purpose committee for supporting or opposing a judicial candidate may not use a political contribution to make a political contribution to a political committee that, when aggregated with each other political contribution to a political committee in connection with a general election, exceeds \$500.
- (d) A judicial officeholder or a specific-purpose committee for assisting a judicial officeholder may not use a political contribution to make a political contribution to a political committee in any calendar year in which the office held is not on the ballot.
- (e) This section does not apply to a political contribution made to the principal political committee of the state executive committee or a county executive committee of a political party.
- (f) A person who violates this section is liable for a civil penalty not to exceed three times the amount of political contributions used in violation of this section.

Elec. Code § 253.1611. The Ethics Commission has received a number of inquiries as to whether these provisions restrict transfers between a candidate or officeholder and a specific-purpose political committee supporting the candidate or officeholder, or transfers between separate specific-purpose political committees supporting a candidate or officeholder.

We considered a similar in question in [Ethics Advisory Opinion No. 281](#) (1995). The question there was whether a specific-purpose political committee that transferred funds to the judge it supported would be making a "contribution" to the judge for purposes of the contribution limits in the Judicial Campaign Fairness Act. In the opinion we noted that although a specific-purpose political committee has an identity separate from the candidate or officeholder it supports for purposes of campaign finance reporting, that separate identity is generally disregarded for purposes of the various restrictions in the Judicial Campaign Fairness Act. [Ethics Advisory Opinion No. 281](#) (1995) at 1. We concluded therefore that transfers between a specific-purpose political committee and the candidate or officeholder supported by that committee are not subject to the contribution limits in the Judicial Campaign Fairness Act. *Id.* at 2. For the same reason we conclude that the restrictions in Election Code section 253.1611 do not apply to transfers between two specific-purpose political committees supporting the same candidate or officeholder.⁴

Filing Requirements for Officeholder Seeking a Different Office

The request letter also asks if a single-county district judge who has filed a campaign treasurer appointment with the Ethics Commission as a candidate for justice of a court of appeals must continue to file reports of contributions and expenditures with the county filing authority.⁵ *See generally id.* § 252.010 (regarding transfer of campaign treasurer appointment). A local officeholder who has filed a campaign treasurer appointment with the Ethics Commission is required to file reports of contributions and expenditures with the Ethics Commission and is not required to file with the local filing authority. 1 T.A.C. § 20.277(d). Nonetheless, the officeholder may wish to continue filing reports with the local filing authority as a courtesy to local constituents.

SUMMARY

A district judge may use political contributions raised in connection with his candidacy for district judge to make expenditures in connection with a candidacy for justice of a court of appeals.

The restrictions in Election Code section 253.1611 do not apply to transfers between a judicial candidate or officeholder and a specific-purpose political committee supporting the candidate or officeholder. Nor do the restrictions apply to transfers between two specific-purpose political committees supporting the same individual as a candidate or officeholder.

A district judge who has filed a campaign treasurer appointment with the Ethics Commission is required to file reports of contributions and expenditures with the Ethics Commission and is not required to file with the local filing authority.

¹ The term "political contributions" includes both campaign contributions and officeholder contributions. Elec. Code § 251.001(3), (4), (5).

² We use the term "judicial office" to refer to an office listed in Election Code section 253.151.

³ There is no need for a candidate to create separate specific-purpose political committees in this situation. Rather, the committee that had supported the candidate as a candidate for district judge would simply transfer its campaign treasurer appointment to the Ethics Commission and amend it to show the change in the candidate's status. *See generally* Elec. Code §§ 252.010, 252.006; 1 T.A.C. § 20.311.

⁴ Our statements regarding specific-purpose political committees apply only to a committee that supports a single individual in his or her capacity as a judicial candidate or officeholder and that has not supported any other candidate or officeholder in the past.

⁵ Under the law in effect until September 1, 1999, candidates for single-county district judge (and related specific-purpose political committees) file campaign treasurer appointments with the county filing authority. Elec. Code §§ 252.005(2), 252.006. Single-county district judges and candidates for single-county district judge (and related specific-purpose political committees) file reports of contributions and expenditures with the county filing authority. *Id.* §§ 254.066, 254.097, 254.130. Under a law that takes effect September 1, 1999, candidates for single-county district judge (and related specific-purpose political committees) will file campaign treasurer appointments with the Ethics Commission. Act of May 26, 1999, S.B. 1726, § 1, 76th Leg., R.S. (to be codified at Elec. Code § 252.005(1)(C)). Single-county district judges and candidates for single-county district judge (and related specific-purpose political committees) will file reports of contributions and expenditures with both the Ethics Commission and the county filing authority. *Id.* §§ 2, 3, 4, 76th Leg., R.S. (to be codified at Elec. Code §§ 254.066, 254.097, 254.130).