



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 429

June 16, 2000

Whether a judicial candidate's repayment of a campaign loan counts toward the candidate's expenditure limit under the Judicial Campaign Fairness Act. (AOR-472)

The Texas Ethics Commission has been asked to consider whether a disbursement to repay all or part of the principal amount of a loan counts as an expenditure for purposes of the expenditure limits in the Judicial Campaign Fairness Act.

In 1995 the Texas Legislature adopted the Judicial Campaign Fairness Act, which contains a number of campaign finance restrictions applicable to judicial candidates and officeholders,¹ including a limit on political expenditures in connection with an election.² Elec. Code § 253.168. The question raised here is whether a payment against the outstanding principal of a campaign loan counts as an expenditure for purposes of the expenditure limit.

For reporting purposes, any payment made for campaign purposes, including a loan repayment, is a reportable political expenditure. Consequently, the total amount of expenditures reported may be misleading in regard to the amount of money actually devoted to the campaign. A simple comparison may help make this clear.

Candidate A borrows \$100 for campaign purposes. The candidate then spends the loan proceeds to buy bumper stickers. Then a supporter makes a \$100 contribution, and the candidate uses the contribution to repay the \$100 loan. A report of this activity would show \$200 in expenditures--\$100 for the bumper stickers and \$100 for the loan repayment.

Candidate B receives a \$100 contribution from a supporter. Candidate B then spends the \$100 for bumper stickers. A report of this activity would show \$100 in expenditures.

The net result in each case is the same: a candidate acquires \$100 worth of bumper stickers. Because Candidate A used loan proceeds to buy the bumper stickers, however, the expenditure for the bumper stickers is "echoed" by the expenditure to repay the loan. Consequently, Candidate A's reported expenditure total is twice that of Candidate B.

In the context of a report, any uncertainty about the significance of a reported expenditure total can be resolved by an examination of the itemized schedule of expenditures. The duplication of expenditures is problematic, however, for a judicial candidate who is subject to expenditure limits.

If a loan repayment were considered to be an expenditure for purposes of the expenditure limits in the Judicial Campaign Fairness Act, the expenditure limit for a judicial candidate who made political expenditures from contributions on hand would be, in effect, twice as much as the limit for a candidate seeking the same judicial office who made political expenditures from loan proceeds and then repaid the loan from political contributions. We are confident that the legislature did not intend the Judicial Campaign Fairness Act to put candidates who need to borrow money to conduct a campaign at such a significant disadvantage. Therefore, we conclude that a disbursement made to repay all or part of the principal of a campaign loan does not count as an expenditure for purposes of the expenditure limits in the Judicial Campaign Fairness Act.

SUMMARY

A disbursement made to repay all or part of the principal of a campaign loan does not count as an expenditure for purposes of the expenditure limits in the Judicial Campaign Fairness Act.

¹ The Judicial Campaign Fairness Act applies to a political contribution or political expenditure in connection with the office of chief justice or justice of the Supreme Court; presiding judge or judge of the Court of Criminal Appeals; chief justice or justice of a court of appeals; district judge; judge of a statutory county court; or judge of a statutory probate court. Elec. Code § 253.151.

² Although compliance with the expenditure limits is voluntary, *id.* § 253.164, noncompliance has certain negative consequences. *See generally Id.* §§ 253.165, 253.166.