



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 433

August 10, 2001

Whether a county court judge may raise funds to pay expenses incurred in connection with the judge's defense of charges brought by the Texas State Commission on Judicial Conduct. (AOR-480)

The Ethics Commission has been asked a number of questions about contributions given to a statutory county court judge for the purpose of paying expenses incurred by the judge in connection with the judge's defense against charges brought by the Texas State Commission on Judicial Conduct.¹ The request letter sets out the following facts:

The Texas State Commission on Judicial Conduct has formally charged a county court judge with numerous violations of the Code of Judicial Conduct arising out of his official duties as a judge. The judge has denied the allegations claiming that there has been no misconduct and no violation of the Code of Judicial [C]onduct.

The judge has incurred and continues to incur expenses related to the defense of the charges. The expenses include the hiring and payment of legal counsel and expert witnesses.

The first issue is whether a contribution to the judge for the purpose of paying expenses the judge incurs in defending himself against the charges would be an "officeholder contribution" for purposes of title 15 of the Election Code. Title 15 of the Election Code regulates the acceptance of officeholder contributions by an individual who holds an elective office. *See generally* Elec. Code § 251.001(5) (term "political contribution" includes both campaign contributions and officeholder contributions). An "officeholder contribution" is a contribution to an officeholder that is offered or given with the intent that it be used to defray expenses that are incurred by the officeholder in performing a duty or engaging in an activity in connection with the office and that are not reimbursable with public money. *Id.* § 251.001(4). The question here is whether the term "officeholder contribution" includes a contribution to a judge to defray expenses incurred in defending himself against charges of judicial misconduct.²

The charges against the judge have to do with the way in which he performed duties of his office. His efforts to defend himself are, therefore, activities in connection with his office, and a contribution to defray expenses incurred in his efforts to defend himself is an officeholder contribution.³ *See generally* [Ethics Advisory Opinion No. 310](#) (1996) (officeholder may use political contributions to pay legal expenses incurred in connection with investigation of charges of public corruption against officeholder).

A number of the questions in the request letter have to do with the applicability of various restrictions and reporting requirements in title 15 of the Election Code. Because the contributions in question here would be officeholder contributions, they would be subject to the title 15 reporting requirements that apply to officeholder contributions. The contributions would also be subject to the title 15 restrictions regarding officeholder contributions, including the restrictions in the Judicial Campaign Fairness Act. *See* Elec. Code § 253.151(5) (Judicial Campaign Fairness Act applies to political contribution or expenditure in connection with office of statutory county court judge).

The request letter also asks whether the judge could use surplus political contributions to defray expenses incurred in connection with the charges of judicial misconduct. The only title 15 restriction on an officeholder's use of surplus political contributions is the prohibition against personal use. *Id.* § 253.035. *See generally id.* §§ 254.201 - 254.205 (regarding unexpended political contributions). The term "personal use" does not include the use of contributions for "defending a criminal action or prosecuting or defending a civil action brought by or against the person in the person's status as a candidate or officeholder." *Id.* § 253.035(i)(1). Therefore, the judge may use surplus political contributions to defray expenses incurred in connection with the charges of judicial misconduct.

Another question is whether contributions to the judge to defray expenses incurred in connection with the charges of judicial misconduct would be permissible under section 36.08 of the Penal Code, which contains a number of prohibitions on gifts to public servants. Section 36.10 of the Penal Code contains a number of exceptions to the prohibitions in section 36.08. One of those exceptions is for "a political contribution as defined by Title 15, Election Code." Penal Code § 36.10(a)(4). In other words, a permissible officeholder contribution under title 15 would be a permissible benefit under section 36.08 of the Penal Code.

The last question is whether contributions to the judge to defray expenses incurred in connection with the charges of judicial misconduct would be reportable on a personal financial disclosure statement filed under chapter 572 of the Government Code or under chapter 159 of the Local Government Code.⁴ Although certain gifts must be reported on a personal financial disclosure statement, there is an exception for a gift reported as required under title 15 of the Election Code. Gov't Code § 572.023(b)(7)(B). Therefore, as long as contributions were properly reported under title 15, there would be no requirement to re-report the contributions on a personal financial disclosure statement.⁵

SUMMARY

A contribution to a judge to defray expenses incurred in defending himself against charges of judicial misconduct is an "officeholder contribution" for purposes of title 15 of the Election Code.

A judge may use surplus political contributions to defray expenses incurred in defending himself against charges of judicial misconduct.

A permissible officeholder contribution under title 15 of the Election Code is a permissible benefit under section 36.08 of the Penal Code.

There is an exception to the requirement to report certain gifts on a personal financial disclosure statement for a gift reported as required under title 15 of the Election Code.

¹ The request letter raises questions about the Canons of Judicial Ethics. The Ethics Commission does not have authority to issue advisory opinions in regard to the Canons of Judicial Ethics. *See* Gov't Code § 571.091 (Ethics Commission's authority to issue advisory opinions). Therefore, this opinion does not address the requestor's questions about the Canons of Judicial Ethics.

² Although the request letter does not specifically address the issue, we assume that the expenses in question are not reimbursable with public funds.

³ The provisions in title 15 that deal with personal use of political contributions support our conclusion that a contribution to an officeholder to defray expenses incurred in defending against charges of official misconduct is an officeholder contribution. Title 15 prohibits the personal use of political contributions, but specifically provides that "personal use" does not include the use of contributions for "defending a criminal action or prosecuting or defending a civil action brought by or against the person in the person's status as a candidate or officeholder." Elec. Code § 253.035 (i)(1). In other words, the use of a political contribution to defray expenses brought against an officeholder in his status as an officeholder is a use in connection with an activity of his office. It follows that a contribution given for the purpose of defraying such expenses is a contribution to defray expenses in connection with an activity of office and is therefore an officeholder contribution. *See generally* [Ethics Advisory Opinion No. 310](#) (1996) (officeholder may use political contributions to pay legal expenses incurred in connection with investigation of charges of public corruption against officeholder).

⁴ A statutory county court judge is required to file a personal financial statement under chapter 159 of the Local Government Code. Personal financial statements filed under chapter 159 of the Local Government Code may be filed with either the county clerk or the Ethics Commission. Local Gov't Code § 159.052(a). In either case, however, the statement must comply with the reporting requirements set out in chapter 572 of the Government Code. *Id.* The Ethics Commission has authority to issue advisory opinions in regard to chapter 572 of the Government Code and, in some circumstances, in regard to chapter 159 of the Local Gov't Code. Gov't Code § 571.091.

⁵ In answering this question, we assume that the contributions are contributions in the form of money and that the reporting category for “gifts” is the only relevant reporting category.