



TEXAS ETHICS COMMISSION



****Overruled, Modified, Clarified, or Superseded****

ETHICS ADVISORY OPINION NO. 444

July 12, 2002

Applicability of Election Code section 253.1611 to contributions from judges or judicial candidates to the county executive committee of a political party. (AOR-496)

The Texas Ethics Commission has been asked to consider questions about the application of Election Code section 253.1611 to contributions from judges or judicial candidates to the county executive committee of a political party.

Section 253.1611 of the Election Code contains a number of restrictions on the use of political contributions by judges and judicial candidates to make political contributions to other candidates or officeholders or to political committees.¹ Two of the restrictions apply to judicial candidates' use of political contributions to make political contributions to political committees. Elec. Code § 253.1611(b), (c). There are, however, two exceptions to those restrictions that apply to contributions to the principal political committee of the state executive committee or a county executive committee of a political party. *Id.* § 253.1611(e). The questions raised here have to do with one of those exceptions, which provides as follows:

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 that:

(1) is made in return for goods or services, including political advertising or a campaign communication, the value of which substantially equals or exceeds the amount of the contribution.

Id. § 253.1611(e). In other words, the exception allows a judicial candidate to use political contributions to make a contribution to the state executive committee or a county executive committee of a political party [hereinafter "party committee"] if the contribution is made in exchange for goods and services provided by the party committee² to the donor³ and if the contribution does not exceed the value of the goods or services provided.⁴

The first question raised in the request letter is whether a judicial candidate may use political contributions to make a contribution to a party committee if the party committee has not yet provided the goods and services. There is nothing in the language of section 253.1611(e)(1) to suggest that the provision of goods or services must precede a judicial candidate's contribution to a party committee. Indeed, it is likely that there are circumstances in which a party committee would be unable to provide the promised goods or services to a candidate if it had not yet received funds from the candidate. Therefore, the exception in section 253.1611(e)(1) may apply in a situation in which the contribution to the party committee precedes the committee's provision of goods and services. It is implicit, however, that a contribution is permissible under the exception in section 253.1611(e)(1) only if there is a definite agreement that the party committee will provide specific goods and services at a specific time. Furthermore, we think it is implicit that the party committee must return any portion of a contribution that in fact exceeds the value of goods and services actually provided pursuant to the agreement.

The second question is whether section 253.1611 prohibits judicial candidates from making contributions “to political clubs or organizations that are not affiliated with the county executive committee.” Because the restrictions in section 253.1611 apply only to contributions to candidates, officeholders, and political committees, we assume that the requestor is asking about the application of section 253.1611 to other groups affiliated with political parties that are political committees. *See Id.* § 251.001(12) (defining political committee as “group of persons that has as a principal purpose accepting political contributions or making political expenditures”). The restrictions in section 253.1611 do not absolutely prohibit a judicial candidate’s use of political contributions to make a political contribution to a political committee, but they do limit it. Those limits apply to any political committee, subject to the exceptions in subsection (e). The exceptions in subsection (e) apply only to contributions to the principal political committee of the state executive committee or a county executive committee of a political party. The exceptions do not apply to contributions to other political committees affiliated with political parties.

SUMMARY

Section 253.1611 of the Election Code contains restrictions on a judge’s or judicial candidate’s use of political contributions to make political contributions to political committees. There is an exception to those prohibitions in section 253.1611(e) for “a political contribution made to the principal political committee of the state executive committee or a county executive committee of a political party that: (1) is made in return for goods or services, including political advertising or a campaign communication, the value of which substantially equals or exceeds the amount of the contribution.” That exception does not include a requirement that the provision of goods or services precede the contribution to the party committee. A contribution under the exception in section 253.1611(e)(1) is permissible, however, only if there is a definite agreement that the party committee will provide specific goods and services at a specific time.

The exceptions in section 253.1611(e) apply only to contributions to the principal political committee of the state executive committee or a county executive committee of a political party. The exceptions do not apply to contributions to other political committees affiliated with political parties.

¹ Section 253.1611 does not restrict judges or judicial candidates from using personal funds to make political contributions. Rather, it restricts the ability of judges and judicial candidates to accept political contributions from other sources and to later use them to make political contributions to other candidates or officeholders or to political committees.

² The goods or services must be provided by the party committee, not by any other group or individual.

³ In our opinion, the exception in section 253.1611(e) allows a judicial candidate to make a contribution to a party political committee *only for goods and services that benefit the donor candidate*, not for goods and services that benefit any other candidate or officeholder. Otherwise, donations to political party committees could be used to circumvent the other restrictions in section 253.1611.

⁴ Subsection (e) also contains an exception that allows a judicial candidate to make a contribution to the principal political committee of the state executive committee or county executive committee “in an amount that is not more than the candidate’s or officeholder’s pro rata share of the committee’s normal overhead and administrative or operating costs.” Elec. Code § 253.1611(e)(2). In regard to that exception, the statute provides that the “candidate’s or officeholder’s pro rata share of a political committee’s normal overhead and administrative or operating costs is computed by dividing the committee’s estimated total expenses for a period by the number of candidates and officeholders to whom the committee reasonably expects to provide goods or services during that period.” *Id.* § 253.1611(f).