



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 445

July 12, 2002

Whether an individual who now holds a federal judicial office may use political contributions accepted as a Texas judicial candidate or officeholder to make expenditures in connection with the federal judicial office. (AOR-497)

The Ethics Commission has been asked to consider whether an individual who now holds a federal judicial office may use political contributions accepted as a Texas judicial candidate or officeholder to make expenditures in connection with the federal judicial office.¹

The federal judge at issue has a campaign treasurer appointment on file in Texas and is therefore a “candidate” for purposes of title 15 of the Texas Election Code. Elec. Code § 251.001(1)(A). Under title 15, an individual who is a candidate may not use a contribution accepted as a Texas judicial candidate or officeholder to make an officeholder expenditure in connection with “an office other than a judicial office.” *Id.* § 253.161(b). In a previous advisory opinion we concluded that the phrase “an office other than a judicial office” referred to *elective* offices not listed in section 253.151 of the Election Code. [Ethics Advisory Opinion No. 439](#) (2001). Here we conclude that the phrase “an office other than a judicial office” refers to *state and local elective offices in Texas* that are not listed in section 253.151 of the Election Code.² Thus, both because the office in question is not elective and because it is not a state or local office in Texas, we conclude that section 253.161(b) does not prohibit the federal judge from using use political contributions he accepted as a Texas judicial candidate or officeholder to make expenditures in connection with his federal office.

The request also raises a question about the “personal use” prohibition in section 253.035 of the Election Code. A person who accepts a political contribution as a state or local candidate or officeholder in Texas may not convert the contribution to personal use. Elec. Code § 253.035. “Personal use” does not include a use “connected with the performance of duties or activities as a candidate for or holder of a public office.” *Id.* § 253.035(d). The issue here is whether the term “public office” in section 253.035 refers to offices other than state and local offices in Texas.

The purpose of section 253.035 is to clarify the term “personal use.” In our view, an expenditure in connection with a federal office is no more a personal use than is an expenditure in connection with a state or local office in Texas.³ We conclude, therefore, that the personal use prohibition in section 253.035 of the Election Code does not prohibit a federal judge from using political contributions accepted as a Texas judicial candidate or officeholder to make expenditures in connection with the federal office. *See* [Ethics Advisory Opinion No. 317](#) (1996) (assuming without discussion that Texas law does not prohibit use of political contribution accepted in connection with state or local office in Texas in connection with campaign for federal office).

SUMMARY

Section 253.161(b) of the Election Code does not prohibit a federal judge from using political contributions accepted as a Texas judicial candidate or officeholder to make expenditures in connection with the federal office.

The personal use prohibition in section 253.035 of the Election Code does not prohibit a federal judge from using political contributions accepted as a Texas judicial candidate or officeholder to make expenditures in connection with the federal office.

¹ In this opinion we consider only the application of title 15 of the Election Code to the requestor's question. The Texas Ethics Commission has no authority to determine whether federal law restricts the use of political contributions accepted in connection with a Texas office to make expenditures in connection with a federal office.

² Because title 15 of the Election Code regulates state and local offices in Texas, we assume that the legislature did not intend the prohibition in section 253.161 to extend to expenditures made in connection with federal offices or offices in other states. See [Ethics Advisory Opinion No. 208](#) (1994) (concluding that political committee is not required to report expenditures in connection with out-of-state elections on report filed with Texas Ethics Commission); see also 2 U.S.C. § 453 (federal law preempts state regulation of federal elections).

³ As indicated in the previous footnote, the term "office" in title 15 of the Texas Election Code generally refers to state and local offices in Texas. In our view, however, it is appropriate to read the term more broadly for the purpose of defining the term "personal use." Indeed, the broader reading of the term "office" in this context results in a consistent outcome: that restrictions in title 15 do not extend to expenditures made in connection with federal offices or elections or offices or elections in states other than Texas.