



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 448

April 10, 2003

Whether a particular lawsuit is an “election contest” for purposes of the provision in the Election Code that allows a member of the legislature to accept political contributions during the moratorium period provided for in section 253.034 of the Election Code. (AOR-500)

The Texas Ethics Commission has been asked to consider whether a particular lawsuit is an “election contest” for purposes of the provision in the Election Code that allows a member of the legislature to accept political contributions during the moratorium period provided for in section 253.034 of the Election Code.

As a general rule, a member or member-elect of the Texas Legislature may not accept a political contribution during the period beginning on the 30th day before the date a regular legislative session convenes and continuing through the day of final adjournment. Elec. Code § 253.034. There are, however, several exceptions to that rule. *Id.* § 253.034(c), (d). One of the exceptions is for a political contribution that was made and accepted with the intent that it be used to defray expenses incurred in connection with an election contest. *Id.* § 253.034(c)(2).

The individual who requested this opinion won a race for the Texas Legislature in the November 2002 election. After the election, the losing candidate in that race filed a lawsuit in district court against the Secretary of State, the Governor, and the requestor. The substantive claim was that the requestor was not a resident of the district from which he was elected and that the requestor was therefore ineligible to hold the office to which he had been elected.

The plaintiff characterized the lawsuit as “an election contest” and requested that the judge recuse himself under the Election Code provision that specifically applies to election contests. All three defendants responded by raising pleas to the jurisdiction, claiming that the legislature, not the district court, had jurisdiction to hear an election contest involving an election for a seat in the Texas Legislature. *See generally* Tex. Const. Art. III, § 8; Elec. Code § 221.002(c),(d). Two of the defendants also pointed out that, in any case, a proceeding challenging an individual’s eligibility to hold office is not an election contest but a quo warranto proceeding, over which a district court has no jurisdiction.¹ *See generally Sparks v. Busby*, 639 S.W.2d 713 (Tex. app. Tyler 1982, writ dismissed w.o.j.). The court dismissed the lawsuit with prejudice.

In our opinion, the lawsuit described above was an election contest for purposes of section 253.034(c)(2) of the Election Code, even though the underlying issue was not properly the subject matter of an election contest. The plaintiff characterized the lawsuit as an election contest and invoked procedural rules that apply to election contests. The requestor was required to respond to the lawsuit to point out that the subject matter was not properly the subject matter of an election contest. We doubt that the legislature intended that the exception in section 253.034(c)(2) of the Election Code apply only to meritorious election contests. We conclude, therefore, that the requestor may accept political contributions made with the intent that they be used to defray expenses incurred in connection with the lawsuit described in this opinion.

SUMMARY

The lawsuit described in this opinion is an election contest for purposes of the provision in section 253.034(c)(2) of the Election Code.

¹ Article III, section 8, of the Texas Constitution provides: “Each House shall be the judge of the qualifications and election of its own members; but contested elections shall be determined in such manner as shall be provided by law.”