



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 449

July 10, 2003

Whether a judge may accept an offer of free membership in a legal association. (AOR-501)

The Texas Ethics Commission has been asked to consider whether a judge may accept an offer of free membership in a legal association. Membership is offered to lawyers who meet certain criteria. The requestor explains that in the past members who are judges have been required to pay dues but that this year the association has announced that judges will not be required to pay dues. The requestor's specific question is whether the association's offer of free membership is an offer of an officeholder contribution for purposes of title 15 of the Election Code.

Title 15 of the Election Code regulates political contributions. *See generally* Elec. Code ch. 253, subch. F (Judicial Campaign Fairness Act). An "officeholder contribution" is a type of political contribution. *Id.* § 251.001(5). The term "officeholder contribution" is defined as follows:

"Officeholder contribution" means a contribution to an officeholder or political committee that is offered or given with the intent that it be used to defray expenses that:

- (A) are incurred by the officeholder in performing a duty or engaging in an activity in connection with the office; and
- (B) are not reimbursable with public money.

Id. § 251.001(4)

The requestor states that a dues payment to the association in question would not be reimbursable with public money. *See generally* [Ethics Advisory Opinion No. 368](#) (1997) (tuition waiver for seminar is not political contribution to judge because county would otherwise pay the tuition). The remaining issues to consider in determining whether the association has offered to make an officeholder contribution are whether the offer of free membership defrays expenses and, if so, whether the judge would incur those expenses in performing a duty or engaging in an activity in connection with his office.

In our opinion, the offer of free membership does defray expenses. Because the association has decided not to charge dues to members who are judges, one might argue that there are no expenses to defray in connection with a judge's membership. In our view, however, the association's decision not to charge dues to members who are judges means that the association is defraying any expenses in connection with members who are judges by spreading them among the members who are not judges. Therefore, we conclude that by offering free membership, the association is offering to defray any actual expenses in connection with the membership. *See generally id.* (fee waiver "defrays expenses").

We also conclude that the judge would incur those expenses in engaging in an activity in connection with his office. The requestor states that the general purpose of the association is "to foster improvement in the ethical and technical standards of practice in the field of advocacy to the end that individual litigants may receive more effective representation and the general public be benefited by more efficient administration of justice consistent with the time-tested and traditional principles of litigation." Certainly, the ethical conduct of litigation is an

issue connected with a judge's activities of office. Furthermore, the fact that the association has created a special membership category for judges indicates that there is an overlap between a judge's activities of office and the mission of the association. Consequently, we conclude that a judge's membership in the association is an activity in connection with the judge's office. Therefore, in the circumstances described here, a judge would be accepting an officeholder contribution by accepting the association's offer of free membership. Thus, the various restrictions and reporting requirements in title 15 of the Election Code that apply to political contributions would apply to a contribution in the form of free membership in the association.

SUMMARY

In the circumstances described in this opinion, a judge would be accepting an officeholder contribution by accepting the association's offer of free membership.