



TEXAS ETHICS COMMISSION



****Overruled, Modified, Clarified, or Superseded****

ETHICS ADVISORY OPINION NO. 451

September 11, 2003

The application of the Judicial Campaign Fairness Act to an incumbent judge who lost in the November 2002 general election but who continues to hold office because the winning candidate was declared ineligible to take office. (AOR-505)

The Texas Ethics Commission has been asked about the application of the Judicial Campaign Fairness Act to an incumbent judge who lost in the November 2002 general election but who continues to hold office because the winning candidate was declared ineligible to take office. *See* Tex. Const. art. 4, § 17 (holdover provision).

Time period for accepting contributions

The Judicial Campaign Fairness Act limits the time period during which a judicial candidate or officeholder may accept political contributions. Elec. Code § 253.153. After the November 2002 general election, candidates who were opposed in that election could continue to accept contributions until March 5, 2003. *Id.* § 253.153(a)(2)(A). In other words, those candidates were prohibited from accepting contributions after March 5, 2003. That prohibition would not apply, however, to political contributions accepted to defray expenses incurred in connection with an election contest. *Id.* § 253.153(b).

The request letter states that the incumbent judge in question here has incurred significant legal expenses since March 5, 2003, in connection with a lawsuit regarding his opponent's eligibility to take office. That lawsuit is not an election contest because a proceeding challenging an individual's eligibility to hold office is not an election contest. Elec. Code ch. 221; *see generally Sparks v. Busby*, 639 S.W.2d 713 (Tex. app.-Tyler 1982, writ dismissed w.o.j.). From the candidates' financial perspective, however, the lawsuit is the functional equivalent of an election inasmuch as they are incurring legal expenses for the purpose of determining who is entitled to hold the office. In our opinion, section 253.153 of the Election Code indicates a legislative intent that the Judicial Campaign Fairness Act should not prohibit judicial candidates from accepting contributions given with the intent that they defray a candidate's legal expenses in connection with a lawsuit intended to determine if the candidate is entitled to hold office. Therefore, we conclude that section 253.153(a)(2)(A) of the Election Code does not prohibit either of the parties to the lawsuit in question from accepting political contributions to defray expenses in connection with the lawsuit.

Contribution Limits

The Judicial Campaign Fairness Act limits the total amount of contributions a judge or judicial candidate may accept from a single source "in connection with any election." Elec. Code § 253.155. *See also id.* §§ 253.157 (limits on contributions from persons affiliated with a law firm); 253.160 (limits on contributions from general-purpose political committees). Any political contribution that a judge or judicial officer accepts is attributable to some election, even if the contribution is intended to defray officeholder expenses. *Id.* § 253.152(2). A contribution that is not designated in writing for a particular election or that is designated as an officeholder expenditure is attributable to the "next election for that office occurring after the contribution is made."¹ *Id.* § 253.152(2). The requestor asks whether a contribution to the incumbent judge to defray the expenses of the law

suit would be an officeholder contribution and, if so, whether the contribution could be attributable to the election that may occur in November 2004 to fill a vacancy in his office.²

The incumbent has standing to bring the lawsuit challenging his election opponent's eligibility to take office because he is the incumbent. Therefore a contribution made for the purposes of defraying the expenses of the lawsuit is an officeholder contribution. [Ethics Advisory Opinion No. 270](#) (1995). In this case, whether such a contribution would be attributable to the possible November 2004 election or the certain November 2006 election may not be known until the deadline for calling a November 2004 election has passed.

Expenditure Limits

The Judicial Campaign Fairness Act also provides for voluntary expenditure limits. Elec. Code § 253.168. The limits apply to "each election in which the candidate is involved." *Id.* The statute does not explicitly state how expenditures are to be attributed to elections. By analogy to the provision regarding attribution of contributions, however, we conclude that officeholder expenditures are attributable to the next election for the officeholder's current office that occurs after the expenditure is made. As with contributions, whether such an expenditure for the lawsuit at issue here would be attributable to the possible November 2004 election or the certain November 2006 election may not be known until the deadline for calling a November 2004 election has passed.

SUMMARY

Section 253.153(a)(2)(A) of the Election Code does not prohibit either of the parties to the lawsuit described in this opinion from accepting political contributions to defray expenses in connection with that lawsuit.

For purposes of the Judicial Campaign Fairness Act, officeholder contributions are attributable to the next election for the officeholder's current office that occurs after the contribution is made, and officeholder expenditures are attributable to the next election for the officeholder's current office that occurs after the expenditure is made.

¹ There is no antecedent for the phrase "that office." Presumably, it refers to the office that a candidate is currently seeking or the office that a judge currently holds.

² A vacancy in the office will occur if there is a final judgment that the election winner is ineligible to take office. If the vacancy occurs by the 65th day before the November 2004 general election date, there will be an election on that date to fill the vacancy.