



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 452

January 9, 2004

Whether in-kind contributions to a judicial candidate count toward the judicial candidate's expenditure limits under section 253.168 of the Election Code. (AOR-506)

The Texas Ethics Commission has been asked to consider two questions about the expenditure limits in the Judicial Campaign Fairness Act.

In 1995, the Texas Legislature adopted the Judicial Campaign Fairness Act, which contains a number of campaign finance restrictions applicable to judicial candidates and officeholders.¹ The act includes a limit on total political expenditures that a judicial candidate may "make or authorize" in connection with an election. Elec. Code § 253.168.

The requestor's first question is about the application of the expenditure limits in a situation in which a supporter hosts and pays the costs associated with a fundraising event for a judicial candidate who has agreed to comply with the expenditure limits in the Judicial Campaign Fairness Act.² The requestor asks whether the supporter's expenditures for the event constitute an in-kind contribution to the candidate and also whether the supporter's expenditures count toward the candidate's expenditure limits.

For purposes of the Judicial Campaign Fairness Act, a contribution is a direct or indirect transfer of money, goods, services, or any other thing of value. Elec. Code § 251.001(2). A campaign contribution to a candidate is a direct or indirect transfer of money, goods, services, or another thing of value to the candidate made with the intent that it be used in connection with a campaign for elective office. Elec. Code § 251.001(2), (3). A contribution of a thing of value other than money is an in-kind contribution. 1 T.A.C. § 20.1(13); [Ethics Advisory Opinion No. 331](#) (1996). In the situation described by the requestor, the supporter would be making an in-kind contribution of all the goods and services provided for the fundraising event.

The issue here is whether the supporter's expenditures for the fundraising event would count toward the candidate's expenditure limits. A candidate who accepts an in-kind contribution does not report the in-kind contribution as an expenditure because an expenditure is defined as a "payment" and the candidate does not make a payment by accepting an in-kind contribution. Elec. Code § 251.001(6). The expenditure limits in the Judicial Campaign Fairness Act, however, apply not only to expenditures made by the candidate but also to expenditures *authorized* by the candidate. Elec. Code § 253.168. In our opinion, an expenditure is "authorized" by a candidate if the candidate gives prior consent or approval to the expenditure. Therefore, in the situation described by the requestor, the expenditures made by the supporter would count toward the candidate's expenditure limits if the expenditures were made with the candidate's prior consent or approval.³

The requestor's second question is about the application of the expenditure limits in the following situation:

A complying candidate orders campaign bumper stickers from a printer. The printer completes the job and sends an invoice to the candidate. The candidate asks a supporter to pay the invoice for him, which the supporter does.

The requestor asks whether the supporter's payment of the invoice would constitute an in-kind contribution to the candidate and also whether the supporter's payment would count toward the candidate's expenditure limits. For the reasons discussed above, the supporter's payment is an in-kind contribution to the candidate. By requesting that the supporter make the payment, the candidate authorized the payment. Therefore, the supporter's payment counts toward the candidate's expenditure limits.

SUMMARY

The in-kind contributions to a judicial candidate that are described in this opinion would count toward the judicial candidate's expenditure limits under section 253.168 of the Election Code.

¹ The Judicial Campaign Fairness Act applies to a political contribution or political expenditure in connection with the office of chief justice or justice of the Supreme Court; presiding judge or judge of the Court of Criminal Appeals; chief justice or justice of a court of appeals; district judge; judge of a statutory county court; or judge of a statutory probate court. Elec. Code § 253.151.

² Although compliance with the expenditure limits is voluntary, *id.* § 253.164, noncompliance has certain negative consequences. *See generally id.* §§ 253.165, 253.166.

³ In this case, the reporting schedules for expenditures would not disclose all expenditures that count toward the expenditure limits. In certain other circumstances, the reporting schedules for expenditures would disclose expenditures that do not count toward the expenditure limits. *See Ethics Advisory Opinion No. 329* (1996) (loan repayments do not count toward expenditure limits).