



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 511

January 31, 2013

Whether a signature on a petition for a place on the ballot constitutes a political contribution that may not be accepted by a judicial candidate during the period in which the candidate is prohibited from accepting political contributions. (AOR-577)

The Texas Ethics Commission (“commission”) has been asked whether a signature on a petition for a place on the ballot constitutes a political contribution that may not be accepted by a statewide judicial candidate during the period in which the candidate is prohibited from accepting political contributions.

To be entitled to a place on the primary election ballot, a candidate must file an application for a place on the ballot. Elec. Code § 172.021(a). An application must be accompanied by a filing fee or a petition in lieu of a filing fee. *Id.* § 172.021(b). A candidate for a statewide judicial office who chooses to pay the filing fee must submit the fee and a petition that includes 50 valid signatures¹ of qualified voters from each court of appeals district. *Id.* § 172.021(g). If the candidate chooses to file a petition in lieu of the filing fee, the candidate must submit a petition that includes 5,000 valid signatures from qualified voters. *Id.* § 172.025(1).

In addition to the signatures, the petition must include certain identifying information with respect to each signer, including the signer’s printed name and residence address. *Id.* § 141.063(a). Each page of a petition must also include the following statement:

I know that the purpose of this petition is to entitle (insert candidate's name) to have his or her name placed on the ballot for the office of (insert office title, including any place number or other distinguishing number) for the (insert political party's name) primary election. I understand that by signing this petition I become ineligible to vote in a primary election or participate in a convention of another party, including a party not holding a primary election, during the voting year in which this primary election is held.

Id. § 172.027.²

The Judicial Campaign Fairness Act (JCFA) applies to political contributions and political expenditures in connection with certain judicial offices, including the offices of chief justice or justice of the supreme court and presiding judge or judge of the court of criminal appeals.³ A judicial candidate or officeholder may only accept a political contribution during the period beginning 210 days before the date an application for a place on the ballot or for nomination by convention for the office is required, if the election is for a full term.⁴ *Id.* § 253.153(a)(1).⁵

The question before us is whether the JCFA’s restrictions would prohibit a candidate for statewide judicial office from accepting signatures on a petition to permit the candidate a place on the ballot in the primary election if the signatures are accepted prior to the 210th day before the deadline to file an application for a place on the ballot. The JCFA would prohibit the candidate from accepting such a signature if the act of signing the candidate’s petition constitutes a political contribution to the candidate.

A political contribution is a campaign contribution or an officeholder contribution. *Id.* § 251.001(5). A campaign contribution is defined as a contribution to a candidate or political committee that is offered or given with the intent that it be used in connection with a campaign for elective office or on a measure. Whether a contribution is made before, during, or after an election does not affect its status as a campaign contribution. *Id.* § 251.001(3). An officeholder contribution is a contribution to an officeholder or political committee that is offered or given with the intent that it be used to defray expenses that are incurred by the officeholder in performing a duty or engaging in an activity in connection with the office and are not reimbursable with public money. *Id.*

§ 251.001(4). A contribution is a direct or indirect transfer of money, goods, services, or any other thing of value, and includes an agreement made or other obligation incurred to make a transfer. *Id.* § 251.001(2). A contribution includes an in-kind contribution, which is a contribution of goods, services, or any other thing of value, except money, and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make such a contribution. Ethics Commission Rules § 20.1(8).

A signature on a candidate's petition for a place on the ballot does not, by itself, constitute a transfer of a thing of value to the candidate and is not a political contribution. Therefore, the JCFA would not prohibit a candidate from merely accepting a person's signature on a petition.⁶

SUMMARY

The Judicial Campaign Fairness Act would not prohibit a candidate for judicial office from merely accepting a person's signature on a petition.

¹ For a signature on a petition to be valid, the signer must be a registered voter of the territory from which the office sought is elected or must be issued a registration certificate for a registration that will become effective in that territory on or before the date of the applicable election. *Id.* § 141.063(a).

² On signing a petition, the signer becomes ineligible to vote in a primary election or participate in a convention of another political party during the voting year in which the primary election is held. *Id.* § 172.026. A person may not sign the petition of more than one candidate for the same office in the same election. *Id.* § 141.066(a).

³ The Act applies only to a political contribution or political expenditure in connection with the office of chief justice or justice, supreme court; presiding judge or judge, court of criminal appeals; chief justice or justice, court of appeals; district judge; judge, statutory county court; or judge, statutory probate court. *Id.* § 253.151.

⁴ For an election for an unexpired term, the period begins on either the 210th day before the date an application for a place on the ballot or for nomination by convention is required to be filed or the day the vacancy occurs, whichever is later. *Id.* § 253.153(a)(1)(B).

⁵ The ending date for the period is 120 days after the date of the election in which the candidate or officeholder last appeared on the ballot, regardless of whether the candidate or officeholder has an opponent in the election. *Id.* § 253.153(a)(2). The prohibition on accepting political contributions during this specific time period does not apply to a political contribution that was made and accepted with the intent that it be used to defray expenses incurred in connection with an election, including the repayment of certain debts that are incurred directly by the making of campaign expenditures. *Id.* § 253.153(b).

⁶ However, any goods or services that are used or provided to obtain a signature on a candidate's petition, such as paper or personal services, would constitute a political contribution to the candidate.