



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 566

September 1, 2021

ISSUES

Whether a judge may use political contributions for consulting and travel expenses to seek an appointment to a federal judicial office. (AOR-646)

SUMMARY

A judge may use political contributions for consulting and travel expenses to seek an appointment to a federal judicial office.

FACTS

The requestor is a state judge who is seeking an appointment to a federal judicial office. He wishes “to use political contributions received in connection with election to a state judicial office to pay expenses, such as consulting and travel expenses, incurred in connection with seeking a federal appointment to another judicial office[.]”

ANALYSIS

Title 15 of the Texas Election Code prohibits candidates and officeholders from converting political contributions to personal use. Tex. Elec. Code § 253.035(a). “Personal use” is defined as “a use that primarily furthers individual or family purposes not connected with the performance of duties or activities as a candidate for or holder of a public office.” *Id.* § 253.035(d).

The Commission has previously concluded that a federal judge may use political contributions accepted as a Texas judicial candidate or officeholder to make expenditures in connection with the federal office. Tex. Ethics. Comm’n Op. No. 445 (2002). In so holding, the Commission found that “an expenditure in connection with a federal office is no more a personal use than is an expenditure in connection with a state or local office in Texas.” *Id.* The Commission has also concluded that campaign contributions received in connection with campaigns for state office may be used to campaign for a different, federal office. Tex. Ethics. Comm’n Op. No. 317 (1996) (“As a general rule, the Texas Election Code does not prohibit the use of campaign contributions received in connection with one office to campaign for another office.”).

Unlike in Ethics Advisory Opinion No. 445, this requestor does not yet hold the federal judicial office, so the expenditures would not be connected with the performance of duties or activities as a “holder” of a public office. Tex. Elec. Code § 253.035(d). Therefore, the question becomes whether the requestor is a “candidate” for the federal judicial office for purposes of Title 15. *See* Tex. Elec. Code § 253.035(d) (“Personal use” is “a use that primarily furthers individual or family purposes not connected with the performance of duties or activities *as a candidate for or holder of a public office.*”) (emphasis added).

Title 15 defines “candidate” broadly to mean any person “who knowingly and willingly takes affirmative action for the purpose of gaining *nomination or election* to public office or for the purpose of satisfying financial obligations incurred by the person in connection with the campaign for *nomination or election.*” *Id.* at § 251.001(1) (emphasis added). The definition includes several examples of “affirmative action,” including “the filing of an application for *nomination* by convention” and “the seeking of the *nomination* of an executive committee of a political party to fill a vacancy.” *Id.* at §§ 251.001(1)(C), 251.001(1)(H) (emphasis added).

In our opinion, a person who knowingly and willingly takes affirmative action for the purpose of gaining an appointment to a federal judicial office—which necessarily involves being nominated first—is a “candidate” for that office under Title 15’s definition. Therefore, the requestor may use political contributions accepted as a Texas judicial candidate or officeholder to pay for ordinary and necessary expenses incurred in connection with seeking appointment to a federal judicial office.