



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 583

December 14, 2022

ISSUE

Whether, under the Judicial Campaign Fairness Act (JCFA), a general-purpose committee may make a maximum “campaign contribution” (up to \$25,000) to a state-wide judicial candidate and a maximum “officeholder contribution” (up to an additional \$25,000) before a general election. (AOR 673)

SUMMARY

No. The JCFA prescribes a \$25,000 per-election limit on “political contributions” from general-purpose committees to a judicial candidate or officeholder regardless of whether classified as a “campaign contribution” or “officeholder” contribution.

FACTS

The requestor represents a general-purpose political committee. The requestor asks whether the general-purpose committee, which did not contribute to an incumbent state-wide judicial candidate in a primary election, may make a \$25,000 campaign contribution and a \$25,000 officeholder contribution after the primary election but before the general election.

ANALYSIS

The requestor asks whether a statewide judicial candidate may accept up to \$50,000 from a general-purpose committee in a general election if the contributions are classified as \$25,000 in campaign contributions and \$25,000 in officeholder contributions. The answer is no. The JCFA sets a limit on “political contributions” made by a general-purpose political committee to a statewide judicial candidate at \$25,000 per election. Tex. Elec. Code § 253.157(a-1)(1). This is true regardless of whether the political contributions are classified as campaign or officeholder contributions.

Under the JCFA, a statewide judicial candidate or officeholder “may not knowingly accept political contributions from a general-purpose committee that, in the aggregate, exceed . . . \$25,000” in connection with an election in which the judicial candidate’s name appears on the ballot. *Id.* (emphasis added).

STAFF DRAFT. ATTORNEY/CLIENT PRIVILEGED COMMUNICATION

A “political contribution” is a “campaign contribution” or “officeholder contribution.” *Id.* § 251.001(5).¹ The plain text of the statute does not allow general-purpose committee to classify contributions made for a general election as both campaign and officeholder contributions to effectively double its contribution limit in a general election. *Id.* § 253.157(a-1)(1). This is true regardless of whether the general-purpose committee contributed in the primary election or not. Tex. Elec. Code §§ 253.1621(a) (classifying the primary and general elections as separate elections for the purposes of contribution limits); 253.152(2) (generally attributing a contribution to the next election after the contribution for the purpose of contribution limits).

The requestor also asks whether a general-purpose committee may make an officeholder contribution to defray officeholder costs already expended by the incumbent judicial candidate so that the contribution is attributable to a past election’s contribution limit.

The answer, again, is no. Although the JCFA allows for certain political contributions to be attributable to a past election for the purposes the limits on political contributions, the contributions must be made to defray past election debts—not officeholder expenses. *See id.* § 253.153(b).

Generally, a judicial candidate or officeholder may only accept political contributions during a campaign fundraising window, which ends the 120th day after the date of the election in which the candidate or officeholder last appeared on the ballot. Tex. Elec. Code § 253.153(a)(2). However, a judicial candidate or officeholder may accept a political contribution outside the fundraising window if the contribution is made and accepted with the intent that it be used to defray expenses incurred in connection with an election, including the repayment of any debt, that occurred between the date the application for a place on the ballot or for nomination by convention was required to be filed and election day. Elec. Code § 253.153(b). The contribution must be so designated in writing. *See id.* § 253.152(2).

The requestor seeks to rely on the exception allowing certain contributions to be attributed to a past election to make an “officeholder contribution” that would otherwise put the general-purpose committee over the contribution limit for the general election. That is not allowed. The exception allowing attribution to a past election applies only to contributions made to defray “expenses incurred in connection with an election.” *Id.* § 253.153(b). Officeholder contributions by definition do not apply to expenses incurred in connection with an election. *Id.* § 251.001(4). Therefore, a general-purpose committee may not effectively double its

¹ A “campaign contribution” is “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.” *Id.* § 251.001(3). 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: (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).

STAFF DRAFT. ATTORNEY/CLIENT PRIVILEGED COMMUNICATION

contribution limit in a general election by classifying its contributions to an incumbent judicial candidate as both campaign and officeholder contributions.