



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 589

June 28, 2023

ISSUE

Whether a judicial candidate or officeholder may accept a political contribution after the normal fundraising period ends if the contribution is made and accepted with the intent that it be used for legal fees and costs arising from an election contest. (*AOR 682, 683*)

SUMMARY

Yes. A contribution made and accepted with the intent that it be used to defray expenses incurred in connection with a past election may be accepted after the normal fundraising period ends. Legal fees and costs arising from an election contest are expenses incurred in connection with a contested election.

FACTS

The Commission received similar requests for an advisory opinion from two incumbent judges who are subject to legal challenges to the results of the November 8, 2022 election. The petitions for an election contest seek to have the challengers declared the winner or for new elections to be ordered.

Judicial candidates generally cannot accept political contributions later than 120 after their last election day. The window to accept political contributions closed on March 8, 2023, for judicial candidates who last appeared on the November 2022 ballot.

The requestors have incurred substantial expenses for legal fees and other related costs to defend against the election contests after the fundraising window closed. The requestors expect to continue to incur expenses as the election contests are litigated. The requestors ask whether they may accept political contributions beyond the normal fundraising period to pay for expenses incurred after the normal fundraising period ended and for future expected expenses directly related to the election contests.

ANALYSIS

The Judicial Campaign Fairness Act limits the time period during which a judicial candidate or officeholder¹ may accept political contributions. Tex. Elec. Code § 253.153.

The last day a judicial candidate may accept a contribution is generally the 120th day after the date of the election in which the candidate or officeholder last appeared on the ballot. *Id.* § 253.153(a)(2).

However, a candidate may continue to raise political contributions to cover expenses incurred in connection with a past election after the fundraising window has closed. *See* Tex. Elec. Code § 253.153(b).

The relevant part of Section 253.153 reads in full:

(b) Subsection (a)(2) [ending the fundraising period 120 days after the candidate's last election day] 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 any debt that is:

(1) incurred directly by the making of a campaign expenditure during the period beginning on the date the application for a place on the ballot or for nomination by convention was required to be filed for the election in which the candidate last appeared on the ballot and ending on the date of that election; and

(2) subject to the restrictions prescribed by Sections 253.162 and 253.1621.

The plain language of Section 253.153(b) allows a candidate to accept political contributions after the normal fundraising period to pay for expenses arising “in connection with an election.” Subdivision (b)(1) includes a specific example of permissible expenses included in the exception—debt incurred during the fundraising period. The inclusion of a specific example does not modify the plain language of the exception that applies to “expenses incurred in connection with an election.” Legal fees for an election contest are expenses incurred in connection with the contested election. Therefore, a candidate may accept contributions to defray costs associated with an election contest even if the costs are actually incurred after the close of the fundraising window.

Fundraising for an election contest has always been allowed as an exception to the judicial fundraising moratorium. The Judicial Campaign Fairness Act, which created the judicial fundraising moratorium, included an exception allowing fundraising to finance election contests after normal fundraising window closed. Acts 1995, 74th Leg., ch. 763, Sec. 1, eff. June 16, 1995, codified as subchapter F, Chapter 235, Election Code. In 2009, the Legislature expanded

¹ For the sake of brevity this opinion will refer to a “candidate” rather than a “candidate or officeholder”, but the term should be understood to encompass both judicial “candidates and officeholders” as it relates to the temporal fundraising limit.

the election contest exception to apply to all expenses incurred in connection with the past election rather than just an “election contest.” Acts 2009, 81st Leg., R.S., Ch. 1329 (H.B. 4060), Sec. 1, eff. September 1, 2009. The legislature did so by deleting the word “contest” from the phrase “in connection with an election contest.” There is no indication that the legislature intended to end the exception for fundraising for election contests while it otherwise greatly expanded the exception to the fundraising moratorium.

Contributors must designate in writing contributions applicable to a past election.

A contribution to a judicial candidate applies to the candidate’s next election in time unless designated in writing for a particular election. *See* Tex. Elec. Code § 253.152(2). So, for a judicial candidate to accept a contribution outside of the normal fundraising period, the contribution must be designated in writing for the previous election.

Contributions to judicial candidates are also subject to individual limits “in connection with each election.” Tex. Elec. Code § 253.155, .157. If designated for a past election, a contribution will apply towards that election’s contribution limit, even if made and accepted after the election. For example, an individual who had already contributed the maximum amount for an election would not be able to designate a subsequent contribution for that election, should there be an election contest. However, an individual who makes a maximum contribution designated for an election would be able to make another maximum contribution for the next election in which the candidate appears on the ballot.