

Judicial Inquiry Commission

800 SOUTH MCDONOUGH STREET
SUITE 201
MONTGOMERY, ALABAMA 36104

June 25, 1993

This is in response to your request for an advisory opinion from the Judicial Inquiry Commission. Your request concerns the use of "excess" financial contributions received in connection with a judge's election or re-election to judicial office. This Commission makes no distinction between actual campaign financial contributions and the interest earned on those funds. For purposes of this opinion, they are identical.

In response to your questions, the Judicial Inquiry Commission makes the following findings:

1. An elected judge may use excess campaign contributions to cover his or her expenses for transportation, lodging, and food in attending functions such as the Circuit and District Judges Annual Seminar; the Alabama Trial Lawyers Mid-Winter Conference and Annual Meeting; the Alabama Defense Lawyers Annual Seminar, and similar professional "bench-and-bar" type meetings.
2. An elected judge may use campaign expenses to pay the monthly bill for the use in his state or private car of a car telephone, which was purchased with campaign funds during a campaign for re-election, under two circumstances. One, the telephone may be used if the car phone is an ordinary and necessary expense incurred in connection with judicial office and its use is limited to business activity. Two, the telephone may also be used for that campaign activity which is designed to maintain the judge in the office to which he was elected.
3. It is ethically permissible for a judge to use campaign contributions to pay the expenses of letters of condolence and letters of congratulation which include a letter to every bar admittee. The term "expenses" includes the costs of preparing, printing, paper, supplies, and postage.

In reaching these conclusions, a number of factors were considered.

Canon 7B(l)(d) provides:

"A candidate, including an incumbent judge, for a judicial office that is filled either by public election between competing candidates or on the basis of a merit system election:

-
- (d) Should not use or permit the use of campaign contributions for the private benefit of himself." (Emphasis added).

“The restriction against ‘private benefit’ is aimed at ensuring that campaign contributions are used only for legitimate campaign expenses.” P. McFadden, Electing Justice: The Law and Ethics of Judicial Election Campaigns, 59 (American Judicature Society 1990).

Canon 7A(l) recognizes that “so long as judges are subject to nomination and election as candidates of a political party, it is realized that a judge or a candidate for election to a judicial office cannot divorce himself completely from political organizations and campaign activities which, indirectly or directly, may be involved in his election or re-election.”

This Commission recognizes as a fact and reality that the viable constituency of an elected judge is the members of the bench and bar. It is generally within this group that the judge will find the financial support necessary to keep the judge in office.

The Alabama Canons of Judicial Ethics place no period of limitation on when campaign contributions may be solicited, received, or expended. See Advisory Opinion 82-147 (A judge may accept campaign contributions at any time where such contributions comply with the various laws which pertain to campaign contributions and elections.) In this regard, the Canons place no special restrictions upon the campaign or political activities of judges who are not currently candidates or who do not have “active opposition.” McFadden at 49; M. Nicholson, Judicial Ethics: Political Activity and Fund Raising, 22 *Loyola University Law Review* 597 (1991).

For purposes of this opinion, this Commission defines the word “political” broadly and generically to signify such conduct and activity on the part of the judge which, had it occurred in a campaign when the judge had active opposition, would be recognized as legitimate and reasonable “campaign conduct.” Because of the nature of campaign activities, a more precise definition of this term cannot be provided and much must be left to the reasonable discretion of the judge.

By law, judges are subject to the provisions of the Alabama Fair Campaign Practices Act. Ala. Code 1975, § 17-22A-1 through § 17-22A-23. Section 17-22A-7 provides:

“Amounts received by a principal campaign committee as contributions that are in excess of any amount necessary to defray expenditures of the candidate represented by such committee, may be used by such candidate to defray any ordinary and necessary expenses incurred by him or her in connection with his or her duties as a holder of office, may be contributed by him or her to any organization described in section 170(c) of Title 26 of U.S. Code, may be transferred to another political committee or may be used for any other lawful purpose.” (Emphasis added).

This section was amended by Act 93-762, effective June 25, 1993, to provide that “[c]ontributions to an office holder shall not be converted to personal use. For purposes of this act, personal use shall not include room, telephone, office expenses and equipment, housing rental, meals, and travel expenses incurred in connection with the duties as a holder of office.”

Furthermore, Act 93-762, amends § 17-22A-4 of the Fair Campaign Practices Act to provide:

“(b) Candidates for state offices and their principal campaign committees designated in the statement filed with the Secretary of State pursuant to Section 17-22A-4, Code of Alabama 1975, on behalf of persons seeking or holding those offices, may not solicit or accept, or both, contributions during the period when the Legislature is convened in session. For the purposes of this section, the Legislature is considered convened in session at any time from the opening day of the special or regular session and continuing through the day of adjournment sine die for that session. This subsection (b) shall not apply within 120 days of any primary, run-off, or general election and shall not apply to the candidates or principal campaign committees participating in any special election called by the Governor.”

Under the Fair Campaign Practices Act, any expenditure of campaign funds or excess campaign funds must be reported to the extent required by the Fair Campaign Practices Act.

In connection with finding #3, it is the opinion of this Commission that a judge should not use state office supplies or personnel in order to send letters of congratulation to every new admittee of the Alabama State Bar. Such a practice has the appearance of political campaign conduct. When funded by state office supplies or personnel, this practice involves the appearance of impropriety. To the extent that prior Advisory Opinions 83-178, 82-160, 82-126 (authorizing the use of a judge’s official state-purchased stationery and postage in sending messages of thanks to jury veniremen) conflict with this opinion, they are hereby overruled. While a judge may use excess campaign funds to pay the cost of preparing and mailing letters of congratulation to every bar admittee, in order to avoid the appearance of impropriety, those letters should indicate, in some form or fashion, that they do not involve the use of state funds or personnel.

The Commission recognizes that the answers provided in this opinion represent only what is deemed permissible conduct under the Alabama Canons of Judicial Ethics. Although Canon 7 directly addresses a judge’s use of campaign funds, it must be interpreted within the context of the provision of Canon 2 which provides that a judge should avoid not only actual impropriety but also the appearance of impropriety in all his or her activities.

This advisory opinion has been reviewed and approved by the Judicial Inquiry commission and is the opinion of the Commission.