

**ADVISORY OPINION AO-1990-003
RECONSTITUTED AS ETHICS INTERPRETATION EI-1990-003
ISSUED JULY 18, 1990**

The Oklahoma Council on Campaign Compliance and Ethical Standards ["the Council"] has received your request for an advisory opinion asking, in effect:

Can an appellate judge donate excess contributions [i.e. monies donated but not expended on the judge's campaign] to other candidates for judicial offices filled by public election between competing candidates or incumbent judges who are candidates for retention in office without competing candidates, under the provisions of Title 74 O.S. Supp. 1989, § 4217 (A) (2)?

Title 74 O.S. Supp. 1989, § 4217 (A) (2) reads, in pertinent part:

Contributions received by any candidate shall be used to defray any campaign expenditures or any ordinary and necessary expenses incurred by the person in connection with his duties as a holder of the public office including, but not limited to, expenses for use in a future election campaign, for political activity, for community activity or for nonreimbursed public office related expenses. Said contributions shall not be used for any other purposes. Contributions and any interest income earned on said contributions which are not used in this manner within forty-eight (48) months of the date specified for filing the final report of campaign contributions and expenditures pursuant to the provisions of paragraph 4 of subsection A of Section 4215 of this title shall be disposed of as follows:

* * *

2. Donated to the campaign of any other political candidate or to any political party officially recognized by the State Election Board;

Before addressing the applicability of this use of campaign contributions, it is necessary to determine whether an incumbent appellate judge [who files a declaration of candidacy with the Secretary of State for retention in office] is a "candidate"; whether contributions received and expenditures made for the retention of an incumbent appellate judge constitute a "campaign" as these terms are defined in the Oklahoma Campaign Compliance and Ethical Standards Act, Title 74 O.S. Supp. 1990, § 4200 et seq. [the "Act"]; and, therefore, whether they are subject to the provisions of the Act.

Section 4202 (2) of the Act defines a campaign as follows:

2. "Campaign" means and includes all activities for or against the election of a candidate to a specific state or local office for a specific term or the passage or defeat of a state question from the date of the first contribution, the making of the first expenditure, the filing of a declaration of candidacy or a public announcement of intent to seek such election, whichever is first;

Section 4202 (3) of the Act defines a candidate as follows:

3. "Candidate" means a person who has filed a notification and declaration of candidacy for any public office with the Secretary of the State Election Board or the secretary of any county election board. The term "candidate" shall include a person whose candidacy is unopposed, but shall not include any person who has withdrawn such notification and declaration of candidacy;

Section 4223 (C) is the only section of the Act which refers to persons retained in office as follows:

C. Any person retained in an office for which a declaration of candidacy is required to be filed with the Secretary of State as provided in Section 11-101 of Title 26 of the Oklahoma Statutes shall file a Financial Disclosure Statement with the Council on or before the fortieth day after the General Election.

Since the term "candidate" does not include incumbent judges on retention ballots and "campaign" includes activities for or against the election of "candidates" or "state questions", and since the only section referring to judges on retention ballots [Section 4223] refers to them as "persons" and not as "candidates", it would be difficult to construe the sections of the Act pertaining to campaign contributions and expenditures as applicable to incumbent appellate judges on retention ballots.

Therefore, since it appears that you are not a candidate nor do your activities constitute a campaign as defined in the Act, the answer to your question would not be within the jurisdiction of this Council. It does appear, however, from Title 20 O.S. Supp. 1981, § 1404 (4) statute and Canon 7 (B) (2) of the Code of Judicial Conduct, both of which you cite in your petition, that it would be a proper subject matter for the Council on Judicial Complaints.

It is, therefore, the advisory opinion of the Council, as voted on at its regular meeting on July 18, 1990, that since an incumbent judge running for re-election on a retention ballot is not a candidate in a campaign as defined in the Act, neither the petitioner nor the question of whether excess contributions may be donated to other judges who are candidates under the jurisdiction of the Council or other incumbent judges running for re-election on retention ballots are within the jurisdiction of this Council.