



**THE ATTORNEY GENERAL
OF TEXAS**

March 10, 1989

**JIM MATTON
ATTORNEY GENERAL**

Honorable Senfronia Thompson
Chairman
Judiciary Committee
Texas House of Representatives
P. O. Box 2910
Austin, Texas 78769

LO-89-21

Dear Representative Thompson:

You ask whether a member of the judiciary is prohibited from endorsing a candidate for public office. A judicial candidate's political activity is regulated by Canon 7 of the Code of Judicial Conduct [hereinafter the Code]. Canon 7 provides:

CANON 7

**A Judge Shall Refrain from Political
Activity Inappropriate to the Judiciary**

(1) Any candidate for elective judicial office, including an incumbent judge, and others acting on the candidate's behalf, shall refrain from all conduct which would violate the Election Code and/or this Code.

(2) A candidate is prohibited from statements or conduct which, by their nature, indicates an opinion which may be subject to federal or state judicial interpretation.

(3) A candidate shall not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office. Any statement of qualifications, record, or performance in office should be such as can withstand the closest scrutiny as to accuracy, candor and fairness.

Gov't Code Title 2, Subtitle G -- Appendix B at 566.

As noted in an article discussing the Code of Judicial Conduct, the title of Canon 7 is couched in terms of a judge's political activity. The current text of Canon 7, however, refers only to conduct by a judge or a judicial candidate in connection with a judicial campaign. Johnson, A Judge's Conduct: Judicial Ethics, 42 Tex. Bar J. No. 3, 211-216 at 213 (1979).

We have found no provision in the Election Code which restricts the endorsement of a candidate for public office by a judge. Therefore, we must consider whether this Canon or any other provision of the Code proscribes political endorsements. A review of the development of Canon 7 establishes the context in which your question should be considered.

As originally adopted by the Texas Supreme Court in 1974, Canon 7 provided extensive restrictions on the political activity of judges and candidates for judicial office. Canon 7 (A) initially read as follows:

CANON 7

A Judge Should Refrain From Political Activity Inappropriate To His Judicial Office

A. Political Conduct in General.

(1) A judge or a candidate for election to judicial office should not:

- (a) act as a leader or hold any office in a political organization;
- (b) make speeches for a political organization or candidate or publicly endorse a candidate for public office;
- (c) solicit funds for or pay an assessment or make a contribution to a political organization or candidate, attend political gatherings, or purchase tickets for political party dinners, or other functions, except as authorized in subsection A(2);

- (2) A judge holding an office filled by public election between competing candidates, or a candidate for such office, may, insofar as permitted by law, attend political gatherings, speak to such gatherings on his own behalf when he is a candidate for election or reelection, identify himself as a member of a political party, and contribute to a political party or organization.
- (3) A judge should resign his office when he becomes a candidate either in a party primary or in a general election for a non-judicial office, except that he may continue to hold his judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention, if he is otherwise permitted by law to do so.
- (4) A judge should not engage in any other political activity except on behalf of measures to improve the law, the legal system, or the administration of justice. (Emphasis added.)

The original Canon 7 expressly found endorsements of candidates by judges and judicial candidates to be inappropriate conduct. In 1976, the Supreme Court amended the Code; Canon 7 was extensively revised. See Supreme Court Order, Supreme Court Amends Code of Judicial Conduct, 40 Tex. Bar J. No. 2, at 131-132 (1977). The above-quoted text of Canon 7 (A) was repealed in its entirety. There has been no express restriction on political endorsements since the 1976 amendments to the Code. In our opinion, nothing in Canon 7, as currently worded, prohibits political endorsements.

You ask whether Canon 2 of the Code may prohibit such endorsements. Canon 2 states, in relevant part:

CANON 2

A Judge Should Avoid Impropriety and the Appearance of Impropriety in All Activities

A. A judge should respect and comply with the law and should conduct himself or herself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge should not allow family, social, or other relationships to influence his or her judicial conduct or judgment. A judge should not lend the prestige of his or her office to advance the private interests of himself or herself or others; nor should he or she convey or permit others to convey the impression that they are in a special position to influence him or her. A judge should not testify voluntarily in an adjudicative proceeding as a character witness. (Emphasis added.)

Gov't Code Title 2, Subtitle G -- Appendix B at 560.

It is the underscored language about which you inquire. From the original date of enactment, Canon 2 has proscribed the lending of the prestige of a judge's office to advance "private" interests. Significantly, the original version of Canon 2 addressed the interests of other persons, not the judge himself. The earlier version read in pertinent part:

B. A judge should not allow his family, social, or other relationships to influence his judicial conduct or judgment. He should not lend the prestige of his office to advance the private interests of others. (Emphasis added.)

As discussed earlier, Canon 7 of the Code, as originally enacted, prohibited a judge from endorsing and contributing to candidates. It would have been redundant and unnecessary for Canon 2 to regulate activity expressly prohibited by Canon 7. The organization of the Canons supports our reading. Canon 7 addressed political activity specifically; Canon 2 addressed impropriety in a more general sense. We find language in the early versions of Canon 7 which supports our opinion that "private interests" referred to in Canon 2 do not include candidacy. Both the 1974 version of Canon 7 and the text of that Canon as amended in 1976 included the following:

A. Political Conduct in General. Any candidate for judicial office, including an

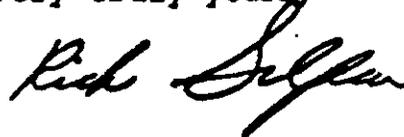
incumbent judge, and others acting on his behalf, should refrain from all conduct which might tend to arouse reasonable belief that he is using the power or prestige of his judicial position to promote his own candidacy. (Emphasis added.)

When the Court meant "candidacy" it used that term. It is unreasonable to assume that the drafters of the Canons used both "candidacy" and "private interests" to mean candidacy.

The Supreme Court deliberately eliminated many of the restrictions on political activity in its amendments to Canon 7 in 1976 without amending Canon 2. Had the Court viewed Canon 2 as encompassing restrictions on political activity which were being repealed, it is our opinion that parallel amendments would have been made in that Canon also.

For these reasons, we do not read Canon 2 as prohibiting the endorsement of candidates by members of the judiciary.

Very truly yours,



Rick Gilpin, Chairman
Opinion Committee

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RG/KG/er

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