

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-277
Issued: September 1983

This opinion was decided under the Code of Professional Responsibility, which was in effect from 1971 to 1990. Lawyers should consult the current version of the Rules of Professional Conduct and Comments, SCR 3.130 (available at <http://www.kybar.org>), before relying on this opinion.

Question: May a lawyer contribute to a Justice, Judge or Candidate's campaign for a position on the Court of Justice?

Answer: Qualified yes.

References: Canon 8; ABA Code of Professional Responsibility; EC 8-6; SCR 4.300; Canon 7(3)(2); SCR 3.530; *Ex Parte Auditor of Public Accounts*, Ky., 604 S.W.2d 682 (1980); *Kentucky Registry of Election Finance v. Louisville Bar Association*, Ky., App., 579 S.W.2d 622 (1978); *Lee v. Commonwealth*, Ky., App., 565 S.W.2d 634 (1978); *Gorman v. Lukowsky*, 6 CA., 431 F. 2d 971 (1970); KRS 121.045; KRS 121.990(4)

OPINION

EC 8-6 states that lawyers, because of their opportunity for personal observation and investigation, have a "special responsibility to aid in the selection of only those who are qualified" for judicial office. This responsibility includes endorsements and contributions made by attorneys to campaigns.

However, KRS 121.045 states:

Contributions to certain candidates by individual prohibited - No person other than a corporation, and no agent of such person on his behalf, shall contribute, either directly or indirectly, any money, service of other thing of value towards the nomination or election of any state, county, city or district officer who, in his official capacity, is required by law to perform any duties peculiar to such person not common to the general public, or to supervise, regulate or control in any manner the affairs of such person, or to perform any duty in assessing the property of such person for taxation. No such person, and no agent of such person on his behalf, shall pay, promise, loan or become pecuniarily liable in any way for any money or other valuable thing on behalf of any candidate for any such office at any election, primary or nominating convention held in this state. No attorney or other person shall accept employment and compensation from any such person with the understanding or agreement, either direct or implied, that he will contribute to any

candidate for any such office, or on his behalf, any part of all of such compensation, towards the nomination or election of such candidate. (Emphasis added.)

The penalties for violating KRS 121.045 are in KRS 121.990(4):

(4) Any attorney who willfully violates any of the provisions of KRS 121.025 or 121.045 shall, in addition to the penalties prescribed in subsections (1), (2), (3) and (7) of this section, be disbarred from the practice of law in this state, and the judgment of conviction shall so declare.

(Subsection (7) subjects a violator to criminal penalties.)

Portions of KRS 121.045 have been held unconstitutional specifically its attempt to prohibit homeowners campaign contributions to candidate for assessor. Lee v. Commonwealth of Kentucky, Ky., App. 565 S.W.2d 634 (1978); Kentucky Registry of Election Finance v. Louisville Bar Association, Ky., App. 579 S.W.2d 622 (1978). Lee held that the purpose of the statute was to guard against corruption of the election process, not to “deny citizens of ...such a basic right as supporting the candidate of their choice ...” Lee at 637. The analogy between a homeowner donating to a property assessor’s campaign and that of an attorney donating to a judge’s campaign is obvious.

The penalties set forth in KRS 121.990(4) include disbarment for violating KRS 121.045. However, Section 116 of the Kentucky Constitution states that the Kentucky Supreme Court “shall, by rule, govern admission to the bar and the discipline of members of the bar.” According to Section 116 and also Ex Parte Auditor of Public Accounts, Ky., 609 S.W.2d 682 (1980), only the Supreme Court of Kentucky has the power to disbar lawyers.

Lawyers are under an affirmative ethical duty to take an active role in selecting qualified judicial candidates and to support candidates both publicly and monetarily. In Gorman v. Lukowsky, 6 CA., 431 F.2d 971 (1970), the court stated, “Lawyers are in a unique position to evaluate the qualifications of another lawyer for service as a judge (at 972). EC 8-6. In addition, SCR 4.300, Canon 7(B)(2) provides that committees for judicial candidates are not “prohibited from soliciting campaign contributions and public support from lawyers.”

It is therefore for the Ethics Committee to construe the Code of Professional Responsibility in regard to the legislative enactments by the Kentucky General Assembly, in particular KRS 121.045 and KRS 121.990(4). This committee does not normally deal with matters involving Questions of pure law. This matter and most ethics questions are mixed questions of law and ethics. This Committee will, therefore, inform the lawyers in the Commonwealth as to their ethical considerations pursuant to SCR 3.530.

This Committee in construing the Code of Professional Responsibility, its Ethical Considerations, the Rules of the Supreme Court, Section 116 of the Kentucky constitution, the benefit to the public, and the Lee case which held that KRS 121.045 was unconstitutional on First Amendment grounds, is forced to rule that lawyers may make campaign contributions to judicial campaigns either individually or through committees in this particular area. *See also* Kentucky

Registry of Election Finance v. Louisville Bar Association, Ky., App., 579 S.W.2d 622 (1978). A lawyer is well advised, however, to follow the law in the future as to enacted legislation by the General Assembly and be very leery of violating the law as adopted by the General Assembly. This particular Ethics Opinion has been considered at length and it appears in the interest of justice that it is necessary in this fact situation only for the lawyer to violate the statute and contribute to a judicial candidate's campaign. A lawyer must comply with other sections of KRS 121, *i.e.*, report requirement, amounts, etc.

Note to Reader

This ethics opinion has been formally adopted by the Board of Governors of the Kentucky Bar Association under the provisions of Kentucky Supreme Court Rule 3.530 (or its predecessor rule). The Rule provides that formal opinions are advisory only.