

Judicial Election Oversight Committee

2022 Judicial Elections

Public Opinion No. 2022-03

2021-M-01306-SCT

**FILED**

**MAY 18 2022**

OFFICE OF THE CLERK  
SUPREME COURT  
COURT OF APPEALS

The Judicial Election Oversight Committee (“Oversight Committee”) has received a request for an opinion as to whether a candidate for circuit judge may buy an advertisement in the program for a “Founders’ Day Dinner” held by a county Republican women’s group. The candidate requesting the opinion (“Candidate A”) states that a prominent political figure will be the guest speaker at the event. Candidate A further states that he is aware of the prohibition on alignments with political parties (Miss. Code Ann. § 23-15-973) but is not aware of any specific prohibition on campaign expenditures to advertise in events sponsored by such groups. Candidate A asks the Oversight Committee to address whether he would violate any applicable canons or statutes by placing an advertisement in the program for this event.

Section 23-15-973 provides that a candidate for circuit judge (or for chancellor, the Court of Appeals, or the Supreme Court) may not “align himself with any candidate or candidates for any other office or with any political faction or any political party at any time during any primary or general election campaign.” Miss. Code Ann. § 23-15-973. The statute also provides that the judges of those courts “should be as far removed as possible from any political affiliations or obligations.” *Id.* In addition, section 23-15-976 provides that “[a] judicial office is a nonpartisan office and a candidate for election thereto is prohibited from campaigning or qualifying for such an office based on party affiliation.” Miss. Code Ann. § 23-15-976.

Canon 5A(1) of the Mississippi Code of Judicial Conduct provides as follows:

- (1) *Except as authorized in Sections 5B(2), 5C(1) and 5C(2), a judge or a candidate for election to judicial office shall not:*
  - (a) act as a leader or hold an 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 political functions.

(Emphasis added).

Canon 5C(1) then states that “[j]udges holding an office filled by public election between competing candidates, or candidates for such office, may, only *insofar as permitted by law*, attend political gatherings, speak to such gatherings in their own behalf while candidates for election or re-election, identify themselves as members of political parties, and contribute to political parties or organizations.” (Emphasis added). The Commentary to Canon 5C(1) references Mississippi Code Annotated section 23-15-973 *et seq.*, noting that those statutes “impose[] restrictions on candidates . . . to assure the non-partisan quality of judicial elections for Supreme Court, Court of Appeals, Chancery Court, Circuit Court and County Court justices and judges.” However, the Commentary explains that Section 5C(1) “permits judges subject to election at any time to be involved in limited political activity.” Specifically, the Commentary makes clear that “[a]ttending or speaking at a political party gathering in the judge’s own behalf while a candidate does not constitute alignments or affiliation with the party sponsoring the gathering.” In addition, a judicial “candidate may . . . establish committees of responsible persons to conduct campaigns for the candidate through media advertisements, brochures, mailings, candidate forums and other means not prohibited by law.” Canon 5C(2).

Thus, Candidate A clearly may attend the Founder’s Day Dinner to speak and campaign on his “own behalf” without violating the relevant statutes or the Code of Judicial Conduct. The candidate’s attendance at such an event to speak or campaign on his “own behalf” is not considered an improper alignment or affiliation with the county Republican women’s organization or the Republican Party. In addition, Candidate A’s campaign committee may purchase advertisements for his campaign. *See* Canon 5C(2). Therefore, the specific question for the Oversight Committee is whether Candidate A would improperly “align himself with . . . any political faction or political party” (Miss. Code Ann. § 23-15-973) if his campaign committee purchases an advertisement in the event program. The Oversight Committee met via zoom to discuss Candidate A’s request for an opinion on this issue on May 16, 2022, and a quorum of seven members of the Committee were present and participated.

In *James v. Westbrook*, 275 So. 3d 62 (Miss. 2019), an unsuccessful candidate for the Court of Appeals (James) alleged that the successful candidate (Westbrook) violated section 23-15-973 by “align[ing]” herself with a candidate for another office. *Id.* at 63-64 (¶3). Specifically, James alleged that Westbrook had “align[ed]” herself with Representative Bennie Thompson of Mississippi’s Second Congressional District—the incumbent candidate and Democratic nominee—and Thompson’s campaign by consenting to a fundraiser in Westbrook’s honor at which Thompson was listed on the invitation as the “special guest.” *Id.* However, the Supreme Court rejected this argument, holding that the Westbrook did not “align” herself with Thompson’s campaign simply because he was a “special guest” at her fundraiser. *Id.* at 69 (¶25).

Prior to the Supreme Court’s decision in *James*, the former Special Committee on Judicial Election Campaign Intervention reached a similar conclusion in response to a

request for an opinion. In Opinion No. 2018-12, the Special Committee addressed the question whether “a judicial candidate [could] have a fundraising event for campaign contributions where the invitation indicates that the Democratic or Republican nominee for Congress will be the special guest.” The Special Committee concluded that “no rule or law that prohibits a candidate’s committee from having a fundraising event that indicates a Democratic or Republican nominee for Congress as the special guest.”

Based on the Supreme Court’s decision in *James*, the Oversight Committee concludes that Candidate A likewise would not violate section 23-15-973 or any other applicable statutes or canons simply by purchasing an advertisement in the program for the Founder’s Day Dinner. Standing alone, the purchase of the advertisement is not an “align[ment]” or an endorsement of the Republican Party. It is simply a paid campaign advertisement for the candidate.

The Oversight Committee cautions, however, that the content of any such advertisement should not endorse the political party or contain any other language that would align the candidate with the political party. The Committee’s opinion that Candidate A will not violate the relevant statutes or canons by placing the advertisement assumes that the advertisement will be a standard campaign advertisement for the candidate that does not endorse or reference the Republican Party or the county Republican women’s group.

The vote of the Oversight Committee was four members in favor of this opinion and three members opposed.

This opinion is limited to the scope and authority of the Oversight Committee under the Mississippi Code of Judicial Conduct. Candidates are reminded that opinions of the Oversight Committee are advisory in nature. *See* Miss. Code Jud. Conduct 5F(1), (7)(a), & (7)(b)(4).