



TEXAS ETHICS COMMISSION



****Overruled, Modified, Clarified, or Superseded****

ETHICS ADVISORY OPINION NO. 104

December 10, 1992

*Whether an officeholder may use political contributions to pay dry cleaning and laundry bills.
(AOR-98)*

The Texas Ethics Commission has been asked whether a legislator may use political contributions to pay dry cleaning and laundry bills incurred in Austin. There are two types of political contributions: campaign contributions and officeholder contributions. Elec. Code § 251.001(5). An "officeholder contribution" is a contribution given to an officeholder with the intent that it be used to defray expenses that:

- (A) are incurred by the officeholder in performing a duty or engaging in an activity in connection with the office; and
- (B) are not reimbursable with public money.

Elec. Code § 251.001(4). A "campaign contribution" to an individual is one given with the intent that it be used in connection with a campaign for elective office. *Id.* § 251.001(3); *see also id.* § 251.001(7), (9) (definition of "campaign expenditure" and definition of "officeholder expenditure"). A campaign contribution may be used for officeholder purposes. *See id.* § 253.035(d).

An officeholder may not convert political contributions to "personal use." *Id.* § 253.035(a). "Personal use" means "a use that primarily furthers individual or family purposes not connected with the performance of duties or activities as a candidate for or holder of a public office." *Id.* § 253.035(d). Personal use does not include:

- (1) payments made to defray *ordinary and necessary expenses* incurred in connection with activities as a candidate or in connection with the performance of duties or activities as a public officeholder, including payment of rent, utility, and other *reasonable housing or household expenses incurred in maintaining a residence in Travis County* by members of the legislature who do not ordinarily reside in Travis County, but excluding payments prohibited under Section 253.038; or
- (2) payments of federal income taxes due on interest and other income earned on political contributions.

Id. (emphasis added). Laundry expenses are not the type of expenses connected with maintaining a residence, such as rent and utility payments. Therefore, we must determine whether such expenses are in connection with the performance of duties or activities as an officeholder. A useful basis for making this determination is the standard for determining whether clothing expenses may be deducted as business expenses for federal tax purposes. Clothing expenses may be deducted as a business expense "only if: (1) the clothing is of a type specifically required as a condition of employment, (2) it is not adaptable to general usage as ordinary clothing, and (3) it is not so worn." *Pevsner v. Commissioner of Internal Revenue*, 628 F.2d 467, 469 (5th Cir. 1980); *Donnelly v. Commissioner of Internal Revenue*, 262 F.2d 411, 412 (2nd Cir. 1959). *See generally Sibla v. Commissioner of Internal Revenue*, 611 F.2d 1260 (9th Cir. 1980) (a personal expense can take on the character of a business expense when confined by conditions of employment). We think the same standard would apply in

determining whether clothing expenses, including laundry expenses, are permissible officeholder expenditures under title 15. *Cf. Hynes v. Commissioner of Internal Revenue*, 74 TC 1266, 1289-92 (1980) (television newsman not entitled to deductions for his wardrobe); *Kosmal v. Commissioner*, 39 TCM 651, 653 (1979) (district attorney who planned to enter more lucrative private practice and believed future employers would expect him to upgrade his dress could not deduct expensive business suits purchased in anticipation of the career change since the suits were suitable for general wear).

Even if there are rules of the House or Senate establishing a dress code for legislators, the clothes worn by members of the legislature are ordinary clothing that can be worn in places other than the Capitol. *Cf. Drake v. Commissioner of Internal Revenue*, 52 TC 842, 844 (1969) (finding that costs for cleaning army fatigue uniforms is deductible, but noting that personal grooming expenses are not business expenses even if there are standards that employers expect employees to adhere to); *Russell v. Commissioner*, 11 TCM 334 (1952) (railroad fireman's cost of work clothing and laundry thereof not deductible since it was not a uniform, but was work clothing customarily worn by men in similar employment and selected by the individual for his own convenience in performing his services). Thus a legislator may not use political contributions to pay for laundry and dry cleaning expenses incurred in Austin.

SUMMARY

Legislators may not use political contributions to pay laundry and dry cleaning expenses incurred in Austin.