



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 133

April 1, 1993

Whether an appellate judge may use political contributions to pay the expenses of maintaining a residence in the city in which the court sits, to pay the expenses of commuting between his home city and the city where the court sits, or to pay the expenses of moving from his home city to the city where the court sits. (AOR-148)

The Texas Ethics Commission has been asked to consider whether a judge, newly elected to an appellate court, may use political contributions to pay for moving from his home city to the city in which the court sits. Another question is whether, if the judge keeps a residence in his home city, he may use political contributions to pay to maintain a residence in the city in which the court sits and to pay the cost of commuting to and from the city in which the court sits.

A candidate or officeholder may not convert political contributions to personal use. Elec. Code § 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 public office. *Id.* § 253.035(d). The term "personal use" does not include:

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 [to purchase real property after January 1, 1992]. (Emphasis added.)

Id. § 253.035(d)(1).

In 1984, the State Ethics Advisory Commission considered whether an elected officer other than a legislator not residing in Travis County could use political contributions to pay the expenses of maintaining a residence in Austin. *See State Ethics Advisory Commission Opinion No. 22* (1984). The Commission concluded that such payment would be a prohibited personal use. *Id.* The commission's opinion contained the following discussion:

The only express statutory exclusion from the definition of personal use relates specifically to members of the legislature who do not ordinarily reside in Travis County. In this regard, article III, sections 6 and 7 of the Texas Constitution require that a person seeking the office of state senator or state representative be a resident of his district. Furthermore, article XVI, section 14 of the Constitution provides that a change of residence constitutes a vacation of the office held. While the constitution requires many other state officers to live in Austin to perform the functions of their offices, there is no legal requirement that they maintain a residence elsewhere.

The inclusion of a specific exception to the general rule performs two functions in the interpretation of this statute. First, the exception of "rent, interest, utility, and other reasonable housing or household expenses" indicates a legislative intent that such housing expenses be included in the term "personal use" when they are not ordinary and necessary expenses incurred in connection with activities as a candidate or in connection with the performance of duties or activities as a holder of public office. Second, the express limitation of that exception to

"members of the legislature who do not ordinarily reside in Travis County" indicates a legislative intent that the narrow exception be applied only to that limited class of persons.

Id. The Ethics Commission concurs in the reasoning of the State Ethics Advisory Opinion. We conclude, therefore, that an appellate judge may not use political contributions to pay the expenses of maintaining a residence in the city in which the court sits. Similarly, we conclude that a judge may not use political contributions to pay the expenses of commuting between his home city and the city where the court sits.

A judge may use political contributions to pay the expenses of moving from his home city to the city where the court sits. Election Law Opinion MAM-3 (1985). Moving expenses would include temporary living expenses to the extent that they are deductible moving expenses for federal income tax purposes.

SUMMARY

An appellate judge may not use political contributions to pay the expenses of maintaining a residence in the city in which the court sits. A judge may not use political contributions to pay the expenses of commuting between his home city and the city where the court sits. A judge may use political contributions to pay the expenses of moving from his home city to the city where the court sits.