



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 146

June 24, 1993

Whether a state representative may use political contributions to reimburse himself for payments from personal funds on a condominium in Austin that the state representative purchased in 1991. (AOR-147)

The Texas Ethics Commission has been asked whether a state representative may use political contributions to reimburse himself for payments he has made over a period of time on a condominium in Austin that he purchased in 1991. This request necessitates a review of various provisions of title 15 of the Election Code, including several amendments that took effect on January 1, 1992.

Since 1983, a candidate or officeholder has been prohibited from converting political contributions to "personal use." Acts 1983, 68th Leg., ch. 444, § 5, at 2588 (added as article 14.03d of prior Election Code, now at section 253.035(a) of the Election Code). An exclusion from the definition of "personal use" that was in effect in 1991 was interpreted to permit legislators who did not ordinarily reside in Travis County to use political contributions to purchase a residence in Travis County:

The term ["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, interest, 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.

Acts 1987, 70th Leg., ch. 899, § 1, at 3007 (prior version of section 253.035(d)(1) of the Election Code); *see* [State Ethics Advisory Commission Opinion No. 18](#) (1984).

Effective January 1, 1992, the legislature prohibited the use of political contributions *to purchase* real estate *or to pay interest or principal* on a note for the purchase of real property. Acts 1991, 72d Leg., ch. 304, §§ 5.06, 5.07, at 1325 (amending Election Code section 253.035(d)(1) and adding section 253.038(a) to the code; current language of the law). This new prohibition does not apply, however, to real property that was purchased before January 1, 1992. Elec. Code § 253.038(c). Thus the legislator in question, who does not ordinarily reside in Travis County, may use political contributions to make payments on the condominium in Austin that he purchased in July 1991.¹ This request, however, raises a more complicated question: whether the legislator may now use political contributions to *reimburse* himself for payments he has previously made out of personal funds for the condominium. Because of a change in the law governing reimbursement for political expenditures made from personal funds, the analysis of this question differs depending on whether the reimbursement to be made is for a payment on the condominium made out of personal funds before January 1, 1992, or whether it is for a payment on the condominium made out of personal funds on or after January 1, 1992.

We focus first on reimbursement to be made for payments on the condominium made out of personal funds before January 1, 1992. Before January 1, 1992, an officeholder was not required to report officeholder expenditures made from the officeholder's personal funds.² Acts 1987, 70th Leg., ch. 899, § 1, at 3018 (prior

version of section 254.092 of the Election Code). It was nevertheless permissible for an officeholder to reimburse his personal funds from political contributions for a political expenditure made from personal funds. *Id.* at 3007 (prior version of section 253.035(h) of the Election Code). The reimbursement had to be reported as a political expenditure. *Id.* at 3008 (Election Code section 253.035(k), now repealed).

Since January 1, 1992, section 253.035(h) of the Election Code has provided as follows:

Except as provided by Section 253.042, a candidate or officeholder who makes political expenditures from his personal funds may reimburse his personal funds from political contributions in the amount of those expenditures only if:

- (1) the expenditures from personal funds were fully reported as political expenditures, including the payees, dates, purposes, and amounts of the expenditures, *in the report required to be filed under this title that covers the period in which the expenditures from personal funds were made*; and
- (2) the report on which the expenditures from personal funds are disclosed clearly designates those expenditures as having been made from the person's personal funds and that the expenditures are subject to reimbursement. (Emphasis added.)

In short, under this provision, the permissibility of reimbursing personal funds from political contributions depends on a candidate's or officeholder's having reported certain information about a political expenditure from personal funds *in the report covering the period in which the expenditure was made*. This change in the law raises the question of whether such reporting of a political expenditure from personal funds is a prerequisite to reimbursement of a political expenditure from personal funds that occurred before January 1, 1992.

To conclude that this new requirement applies to reimbursement for a political expenditure from personal funds made before January 1, 1992, would mean that reimbursement would be possible only if the candidate or officeholder had anticipated future filing requirements in filing reports covering periods before January 1, 1992. We do not think that was the intent of the legislature, particularly in light of the statement in Senate Bill 1 that an expenditure is governed by the law in effect on the date the expenditure was made and that law is continued in effect for that purpose.³ Acts 1991, 72d Leg., ch. 304, § 8.01(b), at 1337. We conclude, therefore, that the reporting requirements of section 253.035(h) are not a prerequisite to reimbursement of a political expenditure made from personal funds before January 1, 1992. Thus, in regard to the legislator's 1991 payments on the condominium out of personal funds--which the legislator did not report and was not required to report--the legislator may now reimburse his personal funds from political funds for payments made on the condominium in 1991.

In regard to payments made on the condominium on or after January 1, 1992, the officeholder may reimburse himself only in accordance with section 253.035(h) of the Election Code. As indicated above, under that provision a candidate or officeholder may not reimburse his personal funds from political contributions for political expenditures made from personal funds unless he complies with specific reporting requirements. Elec. Code § 253.035(h). *See generally id.* ♦♦ 254.203, 254.204, 254.205 (regarding disposition of assets purchased with political contributions).

SUMMARY

A state representative may use political contributions to reimburse himself for payments from personal funds on a condominium that the state representative purchased in 1991. Reimbursements may be made for payments made after January 1, 1992, only if the state representative complied with the reporting requirements set out in section 253.035(h) of the Election Code.

¹ The use of political contributions to make payments on more than one residence in Travis County would be an impermissible personal use.

² Before January 1, 1992, candidates and officeholders were required to report most political expenditures made from personal funds. Acts 1987, 70th Leg., ch. 899, § 1, at 3008 (Election Code section 253.035(k), now repealed). The only exception was for officeholder expenditures by an officeholder. *Id.* at 3018 (prior version of Election Code section 254.092). The purchase of a residence in Travis County by a legislator would have been an officeholder expenditure by an officeholder and therefore not subject to the general requirement that political expenditures from personal funds be reported.

³ The change in the law about reimbursement of political expenditures made from personal funds was part of Senate Bill 1. Acts 1991, 72d Leg., ch. 304, at 1290.