



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 241

January 13, 1995

Whether a legislator may use political contributions to pay various expenses. (AOR-271)

The Texas Ethics Commission has been asked whether a legislator may use political contributions to pay for meals when in Austin; meals for state business not reimbursed by the state; rent and phone service for an Austin residence; gas for travel to functions pertaining to state business not reimbursed by the state; parking, tips, tolls, etc.; gifts such as flags, souvenirs, etc. bought for volunteers and constituents; and a mobile phone.

The campaign finance law prohibits the conversion of political funds to personal use. Elec. Code § 253.035. A "personal use" is one 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, however, 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;*¹

Id. (emphasis and footnote added).

Meals

The request letter raises two separate questions about meals. The first is whether it is permissible to use political contributions to pay for "meals for state business not reimbursed by the state." Use of political contributions for such meals is permissible. The second question is whether it is permissible to pay for meals in Austin in general. In regard to a meal that does not take place in connection with the conduct of state business, the issue is whether costs of meals in Austin are "reasonable housing or household expenses." We do not interpret the "household expense" exception to extend to the cost of meals in Austin. We think the exception is meant to cover costs associated with the necessity of maintaining a second residence in the Austin area.² These are costs that the legislator would not incur if he were not required by his public office to reside in Austin during the legislative session. In contrast, the legislator would incur meal costs whether or not he was required to reside in Austin.

Rent and Phone for an Austin Residence

The exception to the personal use prohibition for rent and utility payments permits a legislator who does not ordinarily reside in Travis County to use political contributions to pay for rent and basic phone service for an Austin residence. Also, we think that a legislator may use political contributions to pay reasonable long-distance charges for personal and business calls to the legislator's usual residence since the legislator would not incur these long-distance charges if he were not required to maintain a residence in Austin in order to serve in the legislature. In reaching this conclusion, we overrule [Ethics Advisory Opinion No. 78](#) (1992).

Gas, Parking, Tolls and Tips

A legislator may use political contributions to pay for gas, parking, tips, and tolls incurred in connection with state business.

Gifts for Volunteers and Constituents

A legislator may use political contributions to purchase small gifts such as flags or souvenirs for volunteers or constituents made in connection with campaign or officeholder activities.³

Mobile Phone

A legislator may use political contributions to purchase a mobile phone to use for candidate or officeholder activities. An asset purchased with political contributions remains subject to the prohibition against conversion to personal use. If the legislator uses the mobile phone for personal or business calls unrelated to candidate or officeholder activities, he must reimburse his political funds for the reasonable value of the personal use. *See Ethics Advisory Opinion No. 116* (1993). When the legislator ceases to be either an officeholder or a candidate, the phone would also be subject to the provisions concerning the retention and disposition of unexpended political contributions. Elec.Code §§ 254.203, 254.204, 254.205.

SUMMARY

A legislator may use political contributions to pay reasonable household expenses in Austin. The term "reasonable household expenses" includes rent and phone service for an Austin residence but does not include all meals in Austin. A legislator may use political contributions to pay for expenses such as gas, parking, tips, tolls, or a mobile phone that are incurred in connection with state business.

¹ Election Code section 253.038 prohibits the use of political contributions for the purchase of real estate.

² Members of the legislature are paid a per diem for each day during the regular legislative session and any special session. The current per diem amount is \$95.00 set by the Texas Ethics Commission. Tex. Const. art. III, § 24a; Tex. Ethics Comm'n, 1 T.A.C. § 50.1 (Revised in open meeting Oct. 14, 1994).

³ Although souvenir flags do not, in our minds, suggest "vote-buying," we think it is important to mention in this context that it is illegal for a public servant to give a benefit to a person in exchange for the person's vote or promise of a vote. Penal Code § 36.02.