



# TEXAS ETHICS COMMISSION



## ETHICS ADVISORY OPINION NO. 248

*February 24, 1995*

*Whether a member of the legislature may use political contributions to make payments during the 1995 legislative session on a condominium the legislator owns in Austin. (AOR-278)*

The Texas Ethics Commission has been asked to consider whether a member of the legislature may use political contributions to make payments during the 1995 legislative session on a condominium the legislator owns in Austin. The legislator purchased the condominium in 1991 for use as rental property and has not resided in the condominium previously.

A member of the legislature may not convert political contributions to personal use. Elec. Code § 253.035. "Personal use" does not include "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." *Id.* subsec. (d) (1). Although current law prohibits a member of the legislature from using political contributions to purchase real estate or to pay interest or principal on a note for the purchase of real property, this prohibition does not apply to a payment made in connection with real property purchased before January 1, 1992. *Id.* § 253.038(a), (c). Therefore, the prohibition on the use of political contributions to make payments for the purchase of real estate does not prohibit payments on the condominium in question here.

The legislator's use of political contributions to make payments on the condominium during the legislative session does, in a sense, "encumber" the condominium. Under section 253.035(c) of the Election Code, a member of the legislature may not convert an asset purchased with political contributions or *income earned on an asset purchased with political contributions* to personal use. Therefore, if a member of the legislature uses political contributions to pay the purchase price of an asset, any income from that asset will also be subject to the prohibition on personal use. Similarly, if the legislator in question here uses political contributions to pay *a part* of the purchase price of the condominium, a proportional amount of any income from the condominium is subject to the prohibition on personal use.<sup>1</sup>

### SUMMARY

Section 253.038 of the Election Code, which prohibits the use of political contributions to make payments on a note for the purchase of real property, does not apply to payments for property purchased before January 1, 1992.

If political contributions are used to pay part of the purchase price of an asset, a proportional amount of any income from the asset is subject to the prohibition on personal use in section 253.035 of the Election Code.

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<sup>1</sup> [Ethics Advisory Opinion No. 13](#) (1992) stated that an asset purchased in whole or in part with political contributions is subject in its entirety to the restrictions set out in title 15 of the Election Code. [Ethics Advisory Opinion No. 116](#) (1993) modified the earlier opinion by saying that an item is not converted to personal use if the candidate or officeholder reimburses his political funds on the basis of the reasonable value of any personal use. We further modify [Ethics Advisory Opinion No. 13](#) by concluding here that if an asset is purchased in part with political contributions, the personal-use restrictions apply proportionately.