



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 359

February 14, 1997

Whether a legislator may use political contributions to pay or reimburse expenditures incurred by a staff member who maintains a residence in Austin to lease and furnish an apartment in the legislator's district. (AOR-396)

The Texas Ethics Commission has been asked whether a legislator may use political contributions to pay or reimburse expenditures incurred by a staff member to lease and furnish an apartment in the legislator's district. The legislator has asked the staff member to spend time in the legislator's district during the legislative session in order to maintain contact with the legislator's constituents. The staff member normally resides in Austin and would continue to maintain a residence there.

A candidate or officeholder may not convert political contributions to "personal use." Elec. Code § 253.035. "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). The expenses in question here are clearly expenses in connection with the legislator's activities as a candidate or officeholder; therefore the legislator may use political contributions to pay those expenses.

A related question is whether the legislator's payment of the expenses in question is a prohibited benefit to the staff member. Penal Code section 36.08(f) prohibits a legislative employee from accepting a benefit from any person. A benefit is defined as "anything reasonably regarded as pecuniary gain or pecuniary advantage." Penal Code § 36.01(3). In our opinion, payment or reimbursement of the expenses in question here does not constitute a "benefit" to the staff member. Although a legislative staff member would normally have to pay the expense of maintaining one residence regardless of whether he was employed by the legislature, the costs associated with maintaining a second residence are attributable solely to the specific and temporary demands of his current employment. Therefore, the legislator's payment of those expenses is not to the personal pecuniary advantage of the staff member and is not a prohibited "benefit" to the staff member. *See also Ethics Advisory Opinion No. 254 (1995) (regarding salary supplements to legislative employees).*

SUMMARY

A legislator may use political contributions to pay or reimburse expenditures incurred by a staff member who normally resides in Austin to lease and furnish a second residence in the legislator's district if the legislator has requested that the staff member spend time in the legislator's district during the legislative session to maintain contact with the legislator's constituents. In the situation described in this opinion, the legislator's payment of those expenses is not a prohibited "benefit" to the staff member.