



# TEXAS ETHICS COMMISSION



## ETHICS ADVISORY OPINION NO. 525

*February 13, 2015*

*Whether a current member of the Texas Legislature may use political contributions to pay the mandatory monthly assessments adopted by the homeowners association of an Austin residence owned by the Legislator who does not ordinarily reside in Travis County. (AOR-593)*

The Texas Ethics Commission (“commission”) has been asked if a member of the Texas Legislature who maintains a condominium in Austin for use both during and between legislative sessions may use political contributions to pay the mandatory monthly assessments adopted by the homeowners association for that residence. The legislator also asks the commission to clarify if he must distinguish between months when the legislature is in session and when it is not in session.

### **Background**

The requestor is a legislator from a district outside of Austin who maintains a residence in Austin for use both during and between legislative sessions. He pays the principal and interest on the mortgage for the residence from personal funds. He stays in the residence 100% of the time during regular and special legislative sessions and frequently travels to Austin and uses the residence between legislative sessions, during which time approximately 90% of the use is for official state duties.

### **Analysis**

Title 15 of the Election Code states that a candidate or officeholder is prohibited from converting 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 a public office. *Id.* § 253.035(d). The term “personal use” would not include a “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.” *Id.* § 253.035(d)(1).<sup>1</sup> Such payments are reportable officeholder expenditures. See ELEC. CODE §§ 251.001(9), 253.035(h), and 254.031(a)(3), (6). The expenses in question here are clearly expenses in connection with the legislator’s activities as an officeholder. Therefore, pursuant to section 253.035(d)(1) of the Election Code, a legislator who does not ordinarily reside in Travis County may use political contributions to pay a mandatory monthly assessment fee from the homeowners association for a residence he owns in Travis County.<sup>2</sup>

### **Between Legislative Sessions**

The legislator also asks us to clarify if, when using political contributions to pay a mandatory monthly assessment fee, the legislator must distinguish between months when the legislature is in session and when it is not in session. In Ethics Advisory Opinion No. 430, we considered whether an elected officeholder may use political contributions to pay a portion of the purchase price and subsequent operating expenses of a car. Ethics Advisory Opinion No. 430 (2000). We held that the officeholder would need to determine what portion of the car’s use was for personal activities and then apportion its costs accordingly so that contributions would not be used to pay any costs attributable to personal use. *Id.* The same would be true here. However, in some instances,

it may be difficult to precisely determine for a future period of time (e.g., an upcoming month) how much the residence would be used for political (i.e. candidate or officeholder) activities and personal activities. In these circumstances, the simplest way to pay a mandatory monthly assessment fee without converting contributions to personal use is for the legislator to initially pay the fee from personal funds, then determine the amount of time the residence is used for political activities during the month covered by the fee. The legislator may then use political contributions to reimburse himself for that portion of time the residence is used for political activities. *Id.* The legislator should keep records of when he is using the residence for political activities.

### SUMMARY

It is permissible for a member of the legislature who does not ordinarily reside in Travis County to use political contributions to pay the mandatory monthly assessments adopted by the homeowners association for a residence in Austin that the member owns to the extent that the residence is used for political purposes.

---

<sup>1</sup> See also Ethics Advisory Opinion Nos. 76 (1992) and 241 (1995) (the exception for reasonable housing or household expenses is meant to cover costs associated with the necessity of maintaining a second residence in the Austin area, including basic phone service for such a residence).

<sup>2</sup> A candidate, officeholder, or specific-purpose committee for supporting, opposing, or assisting a candidate or officeholder may not knowingly make or authorize a payment from a political contribution to purchase real property or to pay the interest on or principal of a note for the purchase of real property. Elec. Code §253.038(a). The legislator uses personal funds to pay the principal and interest on the mortgage for the residence. This section would not prohibit the use of political contributions to pay the mandatory assessment fee.