

STATE ETHICS ADVISORY COMMISSION

ADVISORY OPINION 1984-18

Re: If a legislator uses political contributions to purchase a home for his residence in Austin while he is an office-holder and sells the home for profit, do the proceeds accrue to his political account or to him personally? Does it matter if he has left office when the sale takes place or if he is still an officeholder? If he rents the home during the time when the legislature is not in session for more than any payments he may be making on the mortgage, insurance, and taxes on the home, do the excess funds accrue to the political fund or to him personally?

This opinion responds to a request (AOR 1984-12) from the Public Servant Standards of Conduct Advisory Committee for a State Ethics Advisory Commission opinion. The request was received by the Commission at its meeting on January 13, 1984, and relates to the following issues:

- (1) If a legislator uses political contributions to purchase a home for his residence in Austin while he is an office-holder and sells the home for profit, do the proceeds accrue to his political account or to him personally?
- (2) If he rents the home during the time when the legislature is not in session for more than any payments he may be making on the mortgage, insurance, and taxes on the home, do the excess funds accrue to the political fund or to him personally?
- (3) Does it matter if he has left office when the sale takes place or if he is still an office-holder?

For the purposes of this opinion, we assume that the legislator expends only political contributions to purchase the home and that those contributions were accepted by the legislator on or after September 1, 1983. In addition, we assume that the legislator is a member of the legislature who does not ordinarily reside in Travis County.

The provisions of law pertinent to this opinion are found in Chapter 14 of the Election Code. As recently amended by H.B. 2154, Acts of the 68th Legislature, Regular Session, 1983, Chapter 14 was extended beyond the requirements of record-keeping and reporting of contributions and expenditures into the areas of express prohibition of personal use and limited retention of political funds.

The personal use restriction enacted in H.B. 2154 is found in Tex. Elec. Code Ann. art. 14.03d (Vernon Supp. 1984). That article states in part:

- (a) A person who accepts a contribution as a candidate or officeholder shall not convert such contributions to personal use except as authorized by the State Ethics Advisory Commission.
- (b) In this section, "personal use" means a use which 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 . . . The term does not include . . . 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

In regard to the facts presented, art. 14.03d does not prohibit the use of contributions for the payment of permissible living costs such as rent, interest, utility, and other reasonable housing or household expenses. The statute explicitly contemplates that contributions may be relinquished in exchange for such necessities.

However, when a legislator purchases a home, the transaction is an investment of contributions resulting incidentally in the permissible housing benefits enumerated in art. 14.03d. Because the value of the invested

contributions and earnings derived therefrom are retained within the control of the investing legislator, it is necessary to consider the applicability of art. 14.03d to this situation.

In S.E.A.C. Op. No. 1984-23, the Commission adopted the reasoning of the secretary of state as set forth in Tex. S.O.S. Elec. Law Op. No. JWF-34 (1984) pertinent to earnings on invested contributions. Based on a common law analysis, those opinions held that proceeds derived from a contribution are subject to the same restrictions that apply to the contribution. Therefore, if the contribution is subject to the personal use prohibition of art. 14.03d, the accessions to that contribution are also subject to this provision. On the other hand, if the restriction does not apply to the contribution, it does not apply to accessions to that contribution, even if those accessions accrue on or after September 1, 1983.

Consequently, in applying the reasoning adopted in S.E.A.C. Op. No. 1984-23 to the facts presented herein, it is the opinion of the Commission that:

- (1) If a legislator uses political contributions accepted on or after September 1, 1983 to purchase a home for his residence in Austin while he is an office-holder and sells the home for profit, the proceeds are subject to the personal use prohibition of art. 14.03d, and may not accrue to him personally; and
- (2) If the legislator rents out the home during the time when the legislature is not in session for more than any payments he may be making on the mortgage, insurance, and taxes on the home, the excess funds are subject to the personal use prohibition of art. 14.03d, and may not accrue to him personally.

The third issue presented concerns whether the personal use prohibition of art. 14.03d is applicable to the proceeds in the same manner if the sale of the home takes place after the legislator has left office. Article 14.03d does not answer that question. Therefore, it is pertinent to consider the restricted retention provision enacted in H.B. 2154.

Tex. Elec. Code Ann. art. 14.07a(d) (Vernon Supp. 1984) provides that a person may retain unexpended contributions for six years after that person is no longer a candidate or office-holder. At the end of the six year period, unless the person becomes a candidate again, the former candidate or former office-holder must dispose of any unexpended contributions and report the disposition by filing a sworn statement not later than the 30th day after the end of the six-year period. We conclude from reading this provision together with art. 14.03d that the personal use provision of art. 14.03d continues to apply to contributions as long as they are retained by the office-holder.

Article 14.07a(d) does not specifically refer to the disposition of accessions derived from the investment of contributions. While the Commission did not address that issue in S.E.A.C. Op. No. 1984-23, the secretary of state reached it in Tex. S.O.S. Elec. Law Op. No. JWF-34 (1984) and concluded that:

Article 14.07a(d) does not specifically refer to the disposition of the retained earnings on the unexpended contribution corpus. However, just as interest or other earnings are subject to the personal use prohibition of article 14.03d under the common law rule of accession to principal previously discussed above, it is my opinion that, at the end of the six-year period, any increments, accretions or accessions to the remaining unexpended contribution corpus are subject to the disposition and reporting requirements of article 14.07a(d). They must be transferred and reported in the same manner as if they were unexpended contributions.

We concur in that conclusion and adopt it in response to the third issue raised by the facts presented herein.

Therefore, it is also the opinion of the Commission that, even if the legislator has left office, the proceeds derived from the sale of the home in question are still subject to the personal use prohibition of article 14.03d and may not accrue to him personally.

SUMMARY

If a legislator uses political contributions accepted on or after September 1, 1983, to purchase a home for his or her residence in Austin while he or she is an office-holder, any proceeds derived from the rental or sale of the home for profit are subject to the personal use prohibition of art. 14.03d and may not be converted to the personal use of the office-holder, even if the sale occurs after leaving office. The proceeds continue to be subject to art. 14.03d until they are disposed of by the office-holder not later than six-years after leaving candidate or office-holder status as required by art. 14.07a(d)

W. Page Keeton, Chairman
State Ethics Advisory Commission
Adopted this 14th day of September, 1984.