

# STATE ETHICS ADVISORY COMMISSION

## ADVISORY OPINION 1984-22

Re: Under Section 239d(b) of the Texas Election Code, is exclusive residence in Travis County required if one is to be prohibited from the prescribed uses of contributions? Can an officer elected or appointed to a position requiring living in Austin, whose official residence is elsewhere, use contributions for the purposes described in this subsection?

This opinion responds to a request (AOR 1984-22) 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 issue:

Under Section 239d(b) [Tex. Elec. Code Ann. art. 14.03(t) (Vernon Supp. 1984)], is exclusive residence in Travis County required if one is to be prohibited from the prescribed uses of contributions? Can an officer elected or appointed to a position requiring living in Austin, whose official residence is elsewhere, use contributions for the purposes described in this subsection?

Tex. Elec. Code Ann. art. 14.03d (Vernon Supp. 1984) prohibits a person who accepts a contribution as a candidate or office-holder on or after September 1, 1983, from converting such contribution to personal use. The statute defines "personal use" as:

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. (Emphasis added.)

The only express statutory exclusion from the definition of personal use relates specifically to members of the legislature who do not ordinarily reside in Travis County. In this regard, article III, sections 6 and 7 of the Texas Constitution require that a person seeking the office of state senator or state representative be a resident of his district. Furthermore, article XVI, section 14 of the Constitution provides that a change of residence constitutes a vacation of the office held. While the constitution requires many other state officers to live in Austin to perform the functions of their offices, there is no legal requirement that they maintain a residence elsewhere.

The inclusion of a specific exception to the general rule performs two functions in the interpretation of this statute. First, the exception of "rent, interest, utility, and other reasonable housing or household expenses" indicates a legislative intent that such housing expenses be included in the term "personal use" when they are not ordinary and necessary expenses incurred in connection with activities as a candidate or in connection with the performance of duties or activities as a holder of public office. Second, the express limitation of that exception to "members of the legislature who do not ordinarily reside in Travis County" indicates a legislative intent that the narrow exception be applied only to that limited class of persons.

Under the rules of statutory construction, "exceptions make it clear that statutes in which they appear should apply to all persons or situations not excepted." Sutherland, Statutory Construction § 47.11 (4th ed. 1973). The Texas Supreme Court has stated, "[W]hen specific exclusions or exceptions to a statute are stated by the Legislature, the intent is usually clear that no others shall apply." Unigard Security Insurance Co. v. Charles Schaefer, 572 S.W. 2d 303, 307 (Tex. 1978).

If the legislature had intended to include the housing expenses of legislators who ordinarily reside in Travis County or other state officials within the exception, it certainly would have done so. Therefore, it is the opinion of the Commission that legislators who ordinarily reside outside of Travis County are the only public servants who may use political funds to defray the costs of rent, interest, utility, and other reasonable housing

or household expenses, when they are not incurred in connection with activities as a candidate or with the performance or duties or activities as a holder of a public office.

#### SUMMARY

Legislators who ordinarily reside outside of Travis County are the only public servants who may use political funds to pay housing expenses to maintain a residence in Travis County, when such expenses are not incurred in connection with activities as a candidate or in connection with the performance of duties or activities as a holder of a public office.

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