

**ETHICS INTERPRETATION EI-2001-006**  
**ISSUED NOVEMBER 14, 2001**

At its regular meeting held November 14, 2001, the Ethics Commission considered your request for ethics interpretation. You have asked:

*Do the Constitutional Ethics Rules [“the Rules”], Section 257:1-1-1 et seq. of the Rules of the Ethics Commission, 74 O.S. 2001, Ch. 62, App., permit a statewide officeholder, whose home is more than 100 miles from the Capitol, from utilizing campaign funds for a down payment, then monthly payments, upkeep and related expenses on a condominium in Oklahoma City during his/her tenure of office?*

**FACTS**

You have advised:

- you are an attorney representing a statewide officeholder.
- the officeholder lives more than 100 miles from the Capitol Building, which is his/her permanent workplace.
- the officeholder would like to purchase the condominium, making a down payment, monthly payments, as well as upkeep and related expenses from campaign funds.
- because the officeholder serves the state day-to-day on a year-round basis, you do not suggest an allocation between personal and business use of the condominium, nor does such seem appropriate under these facts.
- you do, however, propose that, once your client no longer holds office, the property be disposed of in accordance with the Rules.
- you rely on Ethics Interpretation EI-96-010, in which the Commission found that the Rules permit a legislator to use campaign funds to pay a deposit, monthly rent and other related expenses, not otherwise reimbursed, incident to leasing an apartment in the state’s Capitol city during legislative session.
- while your request is silent on these points, the Commission assumes for purposes of its analysis that this officeholder has availed himself/herself of the appropriate uses on the face of his/her Statement Of Organization [“Form SO-1”] and has sufficient surplus campaign funds.

Surplus funds arise under these facts “when a candidate committee has an unexpended balance of funds not otherwise obligated for the purposes specified in Paragraph (1) of Subsection (a) of Section 20 of Chapter 10 of this title ...”

## ANALYSIS

The fundamental rule for campaign contributions is that they may never to be converted to personal use. Together with any interest they earn, such funds must be applied solely “to defray any campaign expenditures or any ordinary and necessary nonreimbursed expenses incurred by the person in connection with his duties as a holder of the state office ...”

### Use of campaign contributions and use of surplus funds

(a) **Candidate committees.**

(1) **Use of campaign contributions.** Contributions accepted by a candidate committee may not be converted by any person to any personal use, but shall be used, together with any interest income earned on such contributions, to defray any campaign expenditures or any ordinary and necessary nonreimbursed expenses incurred by the person in connection with his duties as a holder of the state office, including, but not limited to, expenses for use in a future election campaign, for political activity, for community activity or for nonreimbursed office related expenses. Said contributions shall not be used for any other purposes except as permitted in Paragraph (3) of this subsection.

\* \* \*

Section 257:10-1-20

At the outset, the Commission notes you have not alleged this use to be a campaign expenditure, defined under the Rules as:

### Definitions

\* \* \*

“**Campaign expenditure**” is an expenditure not otherwise prohibited which is used to defray the costs of a candidate’s campaign including, without limitation, advertising, travel and food while campaigning, and costs for campaign workers, whether paid or volunteers.

\* \* \*

Section 257:1-1-2

The question thus becomes what constitutes “ordinary and necessary” nonreimbursed expenses incurred in connection with “duties as a holder of the state office.” Apart from enumerating that the latter include “expenses for use in a future election campaign, political activity, community activity or for nonreimbursed office related expenses,” the Rules provide no criteria. The question is fact specific and turns on the circumstances of a given case.

The Commission has previously interpreted Section 257:10-1-20(a). It has repeatedly accorded the provision strict construction.

Ethics Interpretation EI-94-003 addressed whether a single parent legislator might utilize campaign funds for child care. The Commission found that Section 257:10-1-20(a) is a carefully carved out exception to the rule against personal use. It held that if the expense is one which would have occurred incident to holding other employment, it fails to qualify as either a “nonreimbursed public office related expense” or “any ordinary and necessary nonreimbursed expense incurred by the person in connection with his duties as a holder of the state office.” Instead, the Commission required the expense to arise “solely out of the fact of being an officeholder.” It consequently adopted a “but for” test.

If the expense in question would not have arisen "but for" being an officeholder, it is a legitimate officeholder use of unused or surplus campaign funds. If the expense would have arisen in any other event, it does not qualify under this limited use carved out for funds which otherwise cannot be appropriated for personal use.

Id., at p. 3

The Commission noted that child care is an expense which arises when a single parent accepts employment. As such, it is not unique to officeholder status. Child care thus failed to meet the “but for” criteria. In consequence, the requested use of campaign funds for this purpose was denied.

Similarly, EI-98-001 holds that a candidate’s rent, security deposits and utilities arise regardless of running for office. Consequently, these were not permissible uses of campaign funds. Significantly, the Commission found that even a proposed allocation of these expenses between campaign and residential use “is prohibited by Section 257:10-1-20(a) as a conversion of campaign contributions to personal use.”

In EI-99-003, travel in furtherance of the officeholder’s duties was distinguished from a daily commute to the permanent workplace. Since traveling to the job is required regardless of whether a person runs for or wins state office, the Commission found mileage incurred for year-to-year daily commuting is not unique to the officeholder condition. It therefore held that Section 257:10-1-20(a) prohibits use of campaign funds to pay for, defray or reimburse expenses incurred in year-to-year daily commuting between home and the permanent workplace.

You rely on EI-96-010, which permitted a *legislator* to use surplus campaign funds to pay for a deposit, monthly rent and other related expenses, not otherwise reimbursed, incident to leasing an apartment in Oklahoma City. The facts were that this officeholder lived sufficiently far to warrant leasing an apartment in the Capitol city during legislative session. He/she drew per diem only for those days his/her legislative committees met. The allowance was insufficient to pay the rent. While the Commission noted it was not vital to have the apartment until session, the legislator had found one he/she liked which might not be available later. A significant factor was that the legislator was willing to pay rent from personal funds until session began. Accordingly, the question was whether Section 257:10-1-20(a) permitted the officer to pay the deposit from surplus campaign funds at that time – as opposed to waiting until session.

In applying the test to the instant facts, the Commission finds that the need for the apartment in the state's Capitol would not have arisen "but for" the requirements of the legislator's public duties. As such, it is an appropriate use of campaign funds to pay for that part of the lease expense not otherwise reimbursed.

Id., at p.2

As a legislator, this individual was statutorily bound to reside in his home district, while being forced to work certain months during the year at the Capitol. The Commission distinguishes that from one of a statewide officeholder, who is not required to live outside the Capitol area. That the following state officers have no residency requirement within the State of Oklahoma is made clear by omission from the specified criteria of eligibility.

#### **Eligibility to certain state offices**

No person shall be eligible to the office of Governor, Lieutenant Governor, Secretary of State, State Auditor and Inspector, Attorney General, State Treasurer or Superintendent of Public Instruction except a citizen of the United States of the age of not less than thirty-one (31) years and who shall have been ten (10) years next preceding his or her election, or appointment, a qualified elector of this state.

OKLA. CONST. Art. VI, Sec. 3

The need of legislators, who live beyond a practical commuting distance, for an apartment near the Capitol during session arises solely out of being an officeholder. EI-94-003 goes on to hold that "if the expense would have arisen in any other event, it does not qualify under this limited use carved out for funds which otherwise cannot be appropriated for person use." Id., at p. 3

A statewide officer may live anywhere within the confines of Oklahoma and, therefore, is free to move to the Capitol city. He or she may *choose* to live over 100 miles from the permanent workplace, but there is no *requirement* to do so. Maintaining a second year-round residence in Oklahoma City is undoubtedly practical under these facts and a wonderful convenience. Acquiring a condominium for this purpose can always be done with personal funds. But, the Commission finds that moving to the Capitol city is reasonable for a four to six year term of office. Therefore, purchase of a second residence does not qualify as an "ordinary and necessary" nonreimbursed officeholder expense for a statewide officer. The Commission further finds that a second residence would not be necessary "but for" the officeholder's personal choice to live at his/her primary residence. It therefore holds that surplus campaign funds may not be used to purchase and maintain a condominium under these facts, nor is rent on such a dwelling an appropriate use of surplus campaign funds for this official.

#### **CONCLUSION**

**It is therefore the ethics interpretation of the Ethics Commission, as decided at its regular meeting held November 14, 2001 that the Rules do not permit a statewide elected officeholder, whose home is more than 100 miles from the Capitol, to utilize campaign funds for a down payment, then monthly payments, upkeep and related**

**expenses on a condominium in Oklahoma City during his/her tenure of office, where the officeholder's duties or qualifications of office do not require a residence outside the Capitol city, and whose need for a second residence, while a convenience, does not arise "but for" holding his/her office. For the same reasons, the Commission finds that, under these facts, it is likewise an inappropriate use of surplus campaign funds for a statewide officeholder to pay rent on such a dwelling.**

Please be advised that ethics interpretations are fact specific. They answer only the question or questions put forth in the underlying request according to information described in the "Facts" section [supra]. While they may shed light on other situations, this opinion does not necessarily control them. To be binding on the future action of this agency, the interpretation must be directed to the individual situation.

The Commission is authorized by Oklahoma Constitution Article XXIX, Section Five and Section 305(A)(6) of Title 51 of the Oklahoma Statutes to interpret the Rules and the Political Subdivisions Ethics Act, 51 O.S. Supp. 1999, §§ 301-325. Questions pertaining to other Oklahoma Statutes and the Constitution cannot be interpreted by the Commission and must be referred to the appropriate authority.

Ethics Interpretations are published with sufficient deletions to prevent identification of the person or persons involved in the situations herein described. The name of the requestor is considered confidential. This letter has been labeled accordingly.