

Use of Per Diem

A Guide to the Use of the Legislative Per Diem Set by the Texas Ethics Commission

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This guide will primarily discuss the per diem authorized by Article III, Section 24(a) of the Texas Constitution and set by the Texas Ethics Commission. The current legislative per diem is set at \$190. Ethics Commission Rules §50.1.

Legislators are entitled to this per diem for each day of the regular and any special session. The Texas Supreme Court has interpreted this constitutional per diem as being a compensation payment to a legislator in consideration for all services rendered throughout his or her term. *Spears v. Sheppard*, 150 S.W.2d 769, 770 (Tex. 1941). Accordingly, legislators are entitled to a per diem for each day of session, regardless of how many days were actually attended. *Id.* Similarly, legislators are not required to provide evidence of actual expenditures to receive this per diem. *See id.*

The federal tax treatment of constitutional per diem varies depending on individual circumstances. For more information on the tax implications of these payments, contact the Internal Revenue Service or your tax advisor.

In addition to the constitutional per diem set by the Commission, there are other methods by which expenses incurred traveling to or residing in Austin can be paid. The House and the Senate each have methods by which they provide reimbursement for authorized expenditures. Contact House Business Operations or the Office of the Secretary of the Senate if you have questions about these reimbursements.

A legislator may also use political contributions to pay “reasonable household expenses in Austin” if the legislator does not ordinarily reside in Austin. Ethics Advisory Opinion No. 241 (1995). These expenses include rent and telephone service for an Austin residence, as well as expenses for meals, gas, parking, tips, tolls, and a mobile phone that are incurred in connection with state business. *Id.* A legislator may not use political contributions to pay for meals that are not in connection with state business or any other expense that would constitute a conversion of political funds to personal use including expenses for dry cleaning, family recreation or entertainment, or spouses’ social events. Ethics Advisory Opinion Nos. 104 (1992), 241 (1995), 378 (1997), 405 (1998). If a legislator uses political contributions to pay for travel or living expenses related to state business and is reimbursed for those expenses from the state, that reimbursement must be deposited in the legislator’s political account. Ethics Advisory Opinion No. 204 (1994). For expenditures made on or after July 1, 2014, a legislator will have to indicate on their campaign finance report whether a political expenditure is an officeholder expenditure for living in Austin, Texas.