

HISTORIC LANDMARK COMMISSION
DEMOLITION AND RELOCATION PERMITS
SEPTEMBER 6, 2023
PR-2023-099661; GF-2023-104772
2702 ENFIELD ROAD

PROPOSAL

Construct additions, a new entry stoop, planters, and a pool at a ca. 1938 house.

PROJECT SPECIFICATIONS

Construct a new entry stoop and concrete planters. Construct a new open porch in front of the existing screened porch at the east side of the house. Construct a fenced pool and planters at side yard. Construct a two-story garage connected by a one-story hyphen at the west side of the house.

ARCHITECTURE

One and one-half story Tudor Revival house with details typical of the style, including stone cladding, an arched entryway beneath a steeply pitched gable, and divided casement window with fanlight.

RESEARCH

The house at 2702 Enfield Road was constructed in 1938 for Herman Edwin McKinney and Mary Joseph McKinney shortly after their marriage. Mary McKinney, a member of the prominent Joseph family—Austin pioneers who were some of the city’s most successful early merchants and businesspeople¹—followed in her family’s footsteps by graduating from the University of Texas and opening a ladies’ apparel shop on Sixth Street, which she later moved to the University of Texas’ shopping area, “The Drag” on Guadalupe Street.² She operated the eponymous Mary McKinney Casuals for at least ten years before retiring in 1968.

Herbert McKinney worked for Texas State Employment Commission for many years, eventually becoming chief of the tax division. He was also Executive Director of the Texas-Oklahoma branch of the Kiwanis Foundation, a charitable organization benefiting children’s summer camps. However, in the late 1960s, it was discovered by several TEC commissioners that McKinney, a veteran state employee, was not all that he seemed: a 1966 investigation showed that McKinney had embezzled money for personal use. This in turn set in motion a series of court cases that would affirm legal precedent for federal income tax law in *McKinney v. United States of America*.

After his conviction, McKinney repaid the stolen funds in 1969. He then claimed an income tax deduction for this repayment as a business loss, as well as a tax refund claim. The Fifth Circuit Court of Appeals, in a final ruling on McKinney’s claim to be “made whole tax-wise,” determined that “Our conclusion comports with the prior affirmance by us [...] As an embezzler, plaintiff never received his employer’s funds under a claim of right and the benefits of 26 U.S.C. §1341 are not available to him.”³ McKinney’s indictment also had reverberating consequences for the Texas Employment Commission, who were forced to review their practice of reviewing “900,000 quarterly tax reports...all coming in at the last two or three days of the quarter.”⁴

PROPERTY EVALUATION

Designation Criteria—Historic Landmark

- 1) The building is more than 50 years old.
- 2) The building appears to retain high to moderate integrity.
- 3) Properties must meet two criteria for landmark designation (LDC §25-2-352). Staff has evaluated the property and determined that it may meet two criteria:
 - a. Architecture. The building is a good example of Tudor Revival architecture.

¹ “Joseph Rites Slated Sunday.” The Austin Statesman, 16 Aug 1947: 1; “Obituary.” The Austin Statesman (1921-1973), 04 Apr 1949: 9; “Joseph Rites Set Tuesday.” The Austin Statesman, 18 Apr 1966: 14

² “Obituary.” The Austin Statesman via Newspapers.com, 1997. <https://www.newspapers.com/newspage/357115069/>

³ “Herman E. and Mary E. McKinney, Plaintiffs-appellants, v. United States of America, Defendant-appellee, 574 F.2d 1240 (5th Cir. 1978).”

<https://law.justia.com/cases/federal/appellate-courts/F2/574/1240/218814/>

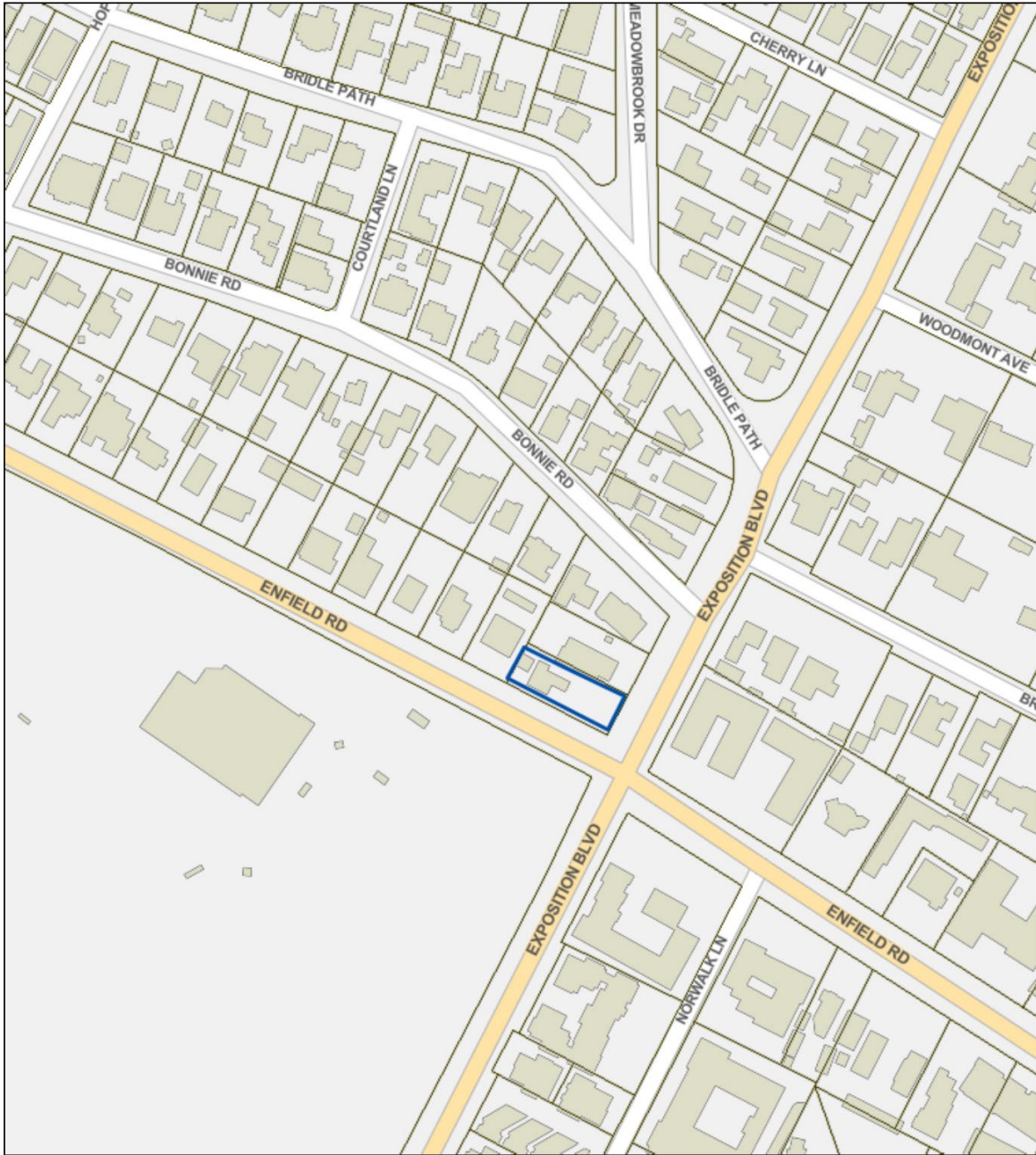
⁴ Castlebury, Glen and Kuempel, George. “Capitol A.” The Austin Statesman; 29 June 1969: A29.


- b.* Historical association. The property is associated with businesswoman Mary Joseph McKinney. It is also associated with Herman E. McKinney, whose conviction and subsequent elevation of his claim on income tax deductions to the Fifth Circuit Court of Appeals influenced U. S. tax law.
- c.* Archaeology. The property was not evaluated for its potential to yield significant data concerning the human history or prehistory of the region.
- d.* Community value. The property does not appear to possess a unique location, physical characteristic, or significant feature that contributes to the character, image, or cultural identity of the city, the neighborhood, or a particular demographic group.
- e.* Landscape feature. The property does not appear to be a significant natural or designed landscape with artistic, aesthetic, cultural, or historical value to the city.

STAFF RECOMMENDATION

Encourage the applicant to increase separation between the pool and the house, and release the permit upon completion of a City of Austin Documentation Package. Alternatively, invite the applicant to the Architectural Review Committee.

LOCATION MAP






1: 2400

8/21/2023


Lot Lines

Lot Line



GF 23-104772

2702 ENFIELD ROAD



This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey. This product has been produced by the City of Austin for the sole purpose of geographic reference. No warranty is made by the City of Austin regarding specific accuracy or completeness.

PROPERTY INFORMATION*Photos**Google maps, 2023*





[Zillow.com](https://www.zillow.com)

Occupancy History

City Directory Research, August 2023

1959	Thomas B. Gordon
1955	Herman E. and Mary McKinney, owners – department chief, State Employment Commission
1952	Herman E. and Mary McKinney, owners – department chief, State Employment Commission
1949	Herman E. and Mary McKinney, owners – supervisor, Texas Employment Commission
1944	Herman E. and Mary McKinney, owners – advisor, State Unemployment Compensation Commission
1941	Herman E. and Mary McKinney, owners
1939	Address not listed.

Couple Honored At Dinner On Wedding Eve

H. E. McKinney And Bride-Elect Complimented

The marriage of Miss Mary Elizabeth Joseph and H. E. McKinney will take place Wednesday at 8 p. m. at Saint Austin's chapel with Father William Blakeslee officiating.

After the rehearsal rites Tuesday at the church the couple was honored by the bride's brother-in-law and sister, Mr. and Mrs. E. J. Kadane of Wichita Falls, with a dinner party at the home of the bride's mother, Mrs. Isaac Joseph, 109 Laurel Lane.

Among the guests at the dinner were the following members of the wedding party:

Mrs. Arthur J. Sharbel of Birmingham, Ala., matron of honor who will also sing the bridal solo; Miss Lilly Joseph, sister of the bride, maid of honor; Mrs. E. J. Kadane and Miss Margaret Joseph, sisters of the bride, Miss Julia Nami of San Antonio, Miss Mary Boaz of Bridgeport, Mrs. Augustus Attal, Miss Anne Bohortouhs of Birmingham, Ala., Miss Dillard Kelso, all bridesmaids and Miss Marlene Joseph, flower girl.

Male Attendants

Also Edward J. Kadane of Wichita Falls, best man, and ushers Eddie Joseph, Ernest Joseph, and Thomas Joseph, cousins of the bride, T. G. Bostic, Pete Balagia, William Nami of San Antonio, Everett Anchutz and Joe Lanier.

In addition to the wedding party the following guests were also present:

Mr. and Mrs. W. E. McKinney of Electra, parents of the bridegroom the Rev. William Blakeslee, Mayor Tom Miller, Mr. and Mrs. Cater Joseph, Mrs. Eddie Joseph, Mrs. Ernest Joseph, Mr. and Mrs. Lon A. Smith, Jack Kadane of Wichita Falls, Mrs. Pete Balagia, Mr. and Mrs. Philip Joseph, Harry Joseph, Mr. and Mrs. Carl Taylor, Miss Doris McKinney of Electra, Miss Cecelia Joseph, Paul Holt and Arthur J. Sharbel of Birmingham, Ala.

After the dinner the bridegroom and his friends were guests of Harry Joseph at his home at a stag party.

Following the church ceremony Wednesday night, Mrs. Isaac Joseph will honor her daughter and son-in-law at a home reception for about 200 guests.



After a wedding trip to Monterrey, Mexico, Mr. and Mrs. H. E. McKinney will be at home in Austin at their new home at 2702 Enfield. Mrs. McKinney was Miss Mary Elizabeth Joseph, daughter of Mrs. Isaac Joseph, before her marriage Wednesday night at Saint Austin's chapel.



H. E. McKinney And Bride-Elect Complimented. The Austin Statesman (1921-1973); 31 Aug 1938: 6. The Austin American (1914-1973); 04 Sep 1938: A4.

W. E. McKinney And Miss Joseph Wed at Chapel

Couple Will Live Here After Trip to Mexico

Wearing a diamond bar pin, the gift of the bridegroom, Miss Mary Elizabeth Joseph, daughter of Mrs. Isaac Joseph, became the bride of Herman E. McKinney, son of Mr. and Mrs. W. E. McKinney of Electra, Wednesday at 8 p. m. at Saint Austin's chapel with Father William Blakeslee performing the ceremony.

White gladioli in a setting of ferns and palms banked the altar which was illuminated by tiered tapers in floor candelabra at each side.

The wedding music was played by Mrs. J. V. Siegmund at the organ and Mrs. Arthur J. Sharbel of Birmingham, Ala., matron of honor, sang the nuptial solo, "Ave Maria."

Ivory Satin Gown

The bride, who was given in marriage by her uncle, Cater Joseph, wore an ivory satin gown with satin buttons closing the entire front from the high neckline to the full hem. Her veil was of handmade Italian lace, elaborately decorated with roses and seed pearls and held by a cap of orange blossoms and pearl. She carried a bouquet of white rosebuds and lilies of the valley with ivory satin streamers.

Miss Lilly Joseph, sister of the bride, was maid of honor and was gowned in gold taffeta with a doll hat of dubonnet and carried a bouquet of purple gladioli.

Fall Colors

The bridesmaids were gowned identical with the matron and maid of honor in fall shades. They all carried purple gladioli bouquets and wore tiny hats of dubonnet. Miss Margaret Joseph and Mrs. E. J. Kadane of Wichita Falls, sisters of the bride, wore peach and shell taffeta, respectively, and Miss Mary Boaz of Bridgeport wore chartruese, Miss Ann Bohortouhs of Birmingham, Ala., wore blue, Miss Dillard Kelso was in dubonnet, Miss Julia Nami of San Antonio in aquamarine and Mrs. Augustus Attal in dusty rose. Miss Marlene Joseph, flower girl, was dressed in a frock of white organdy appliqued with bright flowers and wore a lace pompadour in her hair.

The bridegroom was attended by E. J. Kadane of Wichita Falls as best man and Eddie Joseph, Ernest Joseph, Thomas Joseph, T. G. Bostic, Pete Balagia, Everett Anchutz, Joe Lanier and William Nami of San Antonio as ushers.

Wedding Reception

About 230 guests were present for the reception at the home of the bride's mother after the wedding. Mrs. Isaac Joseph, Mrs. John Joseph, Mrs. Cater Joseph and Mrs. Fred Joseph formed the receiving line with the bride and bridegroom.

The guests were served punch and cake on the lawn. The table was covered with an Italian cut-work cloth and an arrangement of gardenias made the centerpiece.

When the couple left during the reception for the wedding trip to Monterrey, Mexico, the bride wore a black and white travel ensemble with black accessories and a black hat topped with a plume of royal blue and dubonnet. Her corsage was of gardenias. After the trip they will be at home at 2702 Enfield.

Both Mr. and Mrs. McKinney are graduates of the University of Texas.

W. E. McKinney And Miss Joseph Wed at Chapel: Couple Will Live Here After Trip to Mexico. The Austin Statesman (1921-1973); 01


Sep 1938: 6.

Auto Stolen

Herman L. McKinney, 2702 Enfield road, parked his Mercury car on the east side of the street in the 700 block on Brazos street Friday at 6 p. m. When he returned at 10:30 p. m., the car was gone, he reported to police.

The police report disclosed that McKinney left his keys in the car when he parked it.

Auto Stolen. The Austin Statesman (1921-1973); 06 Mar 1943: 7.



MARY E. McKINNEY

Also select from our stocks of 2-piece dresses, washable Jerseys and cotton blouses, and complete accessories to enhance your wardrobe.

Mary E. McKinney

CASUALS & SPORTSWEAR

Bring your Christmas shopping list and I will personally help you select your gifts.

BEAUTIFUL SELECTION OF WOOL SKIRTS
SOLIDS AND PLAIDS BY SUMMIT OF BOSTON
9.95 TO 12.95

CHOOSE A LOVELY **QUILTED SKIRT**
Cotton taffeta
Purple, Emerald Green, Teal, Royal Blue, Varied Browns.
5.95 TO 7.95

ELEGANT LEATHER-LOOK Jackets & Coats
Tailored or dressy, in beige or white
10.95 TO 17.95

FOR ESSENTIAL GROOMING **SWEATERS**
For class, office or travel. A beautiful selection in Excellent Color Range.
5.95 TO 14.95
Also Sizes to 46

Located in Littlefield Bldg., ground floor, between Merritt, Schoefer & Brown and Driskill Coffee Shop. 112 East Sixth. Phone GR 7-2679.

The Austin Statesman (1921-1973); 18 Dec 1958: A12.

Mary E. McKinney
112 E. 6th St.
Casuals

3 DAYS ONLY

MON.—TUES.—WED.

FINAL CLEARANCE

Mary E. McKinney
112 E. 6th St.
Sports Wear

SKIRTS Formerly up to \$12.95

SWEATERS 1 Group

SWEATERS 1 Group

Now \$4⁹⁹ - \$6⁹⁹ - \$8⁹⁹

Now \$1⁹⁹ - \$2⁹⁹ - \$3⁹⁹

Now \$4⁹⁹ - \$5⁹⁹

Sizes Limited

Very nice selection if you are fortunate to find your size — do not miss this final clearance. See our lovely swim wear and spring clothes.

Mary E. McKinney

CASUALS - SPORTSWEAR

HOURS: 9 A.M. - 6:30 P.M. 112 E. 6th St. Littlefield Bldg. GR 7-2679
(6th and Congress)

The Austin American (1914-1973); 21 Feb 1960: C9.

Joseph Rites Set Tuesday

Funeral services will be held here Tuesday morning at St. Mary's Cathedral for Miss Lily Joseph, executive secretary to the state banking commissioner of Texas, who died Saturday in a local hospital.

A solemn requiem high mass will be offered at 9 a.m. at St. Mary's Cathedral with Father Daly of Dallas officiating.

Music for the mass will be sung by the Brothers Choir of St. Edward's University, accompanied by Marguerite Grissom. Rosary services will be held at the Cook Funeral Home Monday at 7:30 p.m.

Miss Joseph, resident of 103 Laurel Lane, was the daughter of the late Mr. and Mrs. Isaac Joseph, pioneer family in the local mercantile business.

She is survived by five sisters, Misses Margaret and Elizabeth Joseph and Mrs. Herman McKinney of Austin; Mrs. Edward G. Kadane of Wichita Falls and Mrs. Ted Karrip of Grand Rapids, Mich. and a brother, T. C. Joseph of New Orleans, La.

A native of Austin, Miss Joseph attended St. Mary's Academy and The University of Texas. Following her graduation from The University of Texas, she joined the State Banking Department, where she has served for 20 years with the exception of two years spent as a legal secretary with the Attorney General's Department.

Palbearers will be George E. Kadane, Joe C. Lane, Conrad P. Wexenthin, Edward Joseph, Eugene Karrip, Robert Straus, C. Stanley Banks, Herman McKinney and S. J. Cater.

Joseph Rites Slated Sunday

Funeral services will be held Sunday at 2 p. m. at St. Austin's Chapel for Cater Joseph, a resident of Austin for 60 years, who died Friday at his home at 2824 Rio Grande. The Rev. George Johnson will officiate and burial will be in Mt. Calvary Cemetery. Palbearers will be L. J. Joseph, W. G. Joseph, G. I. Joseph, James Albert Joseph and Herman McKinney.

Rosary services will be held at family home Saturday at 8 p. m.

Joseph, a native of Lebanon, came to Austin in 1881 and engaged in the mercantile business until his retirement 15 years ago.

He was a fourth degree Knight of Columbus and a member of St. Austin's Chapel.

Survivors include his widow, Mrs. Nora Joseph; two daughters, Mrs. S. H. Emmett of Dallas and Mrs. C. A. Norton of Austin; eight sons, J. L. Joseph, Edward Joseph, Ernest Joseph, Phillip Joseph, Harry Joseph, Sam Joseph and Cecil Joseph, all of Austin, and John R. Joseph of San Antonio; a sister, Mrs. George Azar; five brothers, George Joseph of Lebanon, and John Joseph, Shikrey Joseph, Alex Joseph and Fred Joseph, all of Austin.

Obituary

SHIRKEY JOSEPH

Shirkey Joseph, retired merchant of Austin, died at his home Saturday night. Survivors are his widow, Mrs. Jennie Joseph; five daughters, Mrs. Wolford Attal, Mrs. Sam Tannous, Mrs. Nazig Nauffel and Miss Jenevieve Joseph, all of Austin, and Mrs. S. A. Shia of Welling, W. Va.; eight sons, Albert Joseph, James Joseph, Paul Joseph, Charles Joseph, Howard Joseph, Harold Joseph, Robert Joseph and Raymond Joseph all of Austin; one sister, Mrs. George Azar of Rockhill, S. C.; four brothers, John Joseph, Alex Joseph and Fred Joseph of Austin and George Joseph of Lebanon.

Rosary service will be held at the Cook Funeral Home at 8 p. m. Monday. Requiem mass will be held at St. Mary's Cathedral at 9 a. m. Tuesday with the Rev. Joseph McAllister, CSC officiating. Palbearers will be Louis Joseph, J. L. Joseph, William Joseph, George Joseph, Eddie Joseph and Herman McKinney. Burial will be in Mount Calvary.

Joseph Rites Slated Sunday. The Austin Statesman (1921-1973); 16 Aug 1947: 1.

Obituary. The Austin Statesman (1921-1973); 04 Apr 1949: 9.

Joseph Rites Set Tuesday. The Austin Statesman (1921-1973); 18 Apr 1966: 14.

Zone Request Loses a Round

Property owners led by Curt Bishop, columnist for The Austin Statesman, have taken a first round decision from the zoning committee in their protest against a service station at Enfield and Exposition.

Attorney E. M. DeGuerin, representing Herman McKinney, indicated the application rejected Tuesday night will be taken to the Planning Commission and City Council to get the decision reversed.

Bishop and other property owners protested the service station application on grounds of "spot zoning." The proposed site is the northwest corner of Enfield and Exposition across the street from Municipal Golf Course.

RADAR. The Austin Statesman (1921-1973); 14 Oct 1964: A39.

For TRA Meeting

Taxes, Tips, Clubs Is Subject

Operators of restaurants, private clubs and cabarets from throughout Texas will come to Austin Wednesday for a two-day workshop on how to manage taxes, tips and private clubs.

Sponsored by the Texas Restaurant Association, the meetings will be held in the Ber-

muda Room of the Villa Capri Motor Hotel.

The educational program is open to non-members of the TRA as well as to members.

The program will begin at 9 a.m. Wednesday with a talk by Olan L. Miller, supervisor of the excise and employment tax group, Internal Revenue Service.

He will talk on how the Internal Revenue people tell the difference between a private club and a cabaret, what records should be kept by both, and when liquor pool assessments are subject to club dues taxes.

Coke Stevenson Jr., administrator of the Texas Liquor Control Board, will talk on op-

eration of private clubs, problems of the liquor laws, and state rules and regulations.

John Easton, reviewer for the Internal Revenue, will speak on what constitutes wages for federal unemployment taxes, social security taxes and withholding taxes.

Herman E. McKinney, chief of the tax division, Texas Employment Commission, will discuss the following problems.

What constitutes wages for state unemployment taxes and

for unemployment benefits?

What are the differences between state and federal payroll tax laws?

What responsibilities do you have in reporting the value of meals and tips?

What can you expect from TEC in auditing your reports and payroll records?

Registration for the workshop is \$25 per person.

For TRA Meeting: Taxes, Tips, Clubs Is Subject. The Austin Statesman (1921-1973); 20 Oct 1964: 14.

LIQUIDATION SALE **LIQUIDATION SALE**

GOING OUT OF BUSINESS SALE

Mary Mckinney Casuals

2346 GUADALUPE

\$28,000⁰⁰ WORTH OF LADIES' FINE APPARENT AT COST AND BELOW COST!

FAREWELL!
After Careful Consideration, We Have Come To the Momentous Decision To Quit!
We Are Going To Dispose Of Our Entire Stock (including the fixtures) To You
Good People Of Austin And Surrounding Territory AT TREMENDOUS SAVINGS!

50%—60%—

AND EVEN

75%—OFF!





86 DRESSES
REG. 10.98 to 18.98

17 FINE COATS
VALUES UP TO 69.98

41 JAMAICA PANTS
VALUES UP TO 8.95

47 SWEATERS
VALUES UP TO 10.95

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AND . . . SPORTSWEAR — LINGERIE — BLOUSES — SKIRTS — ALL WEATHER COATS — PURSES . . . AND HUNDREDS AND HUNDREDS OF ITEMS TO NUMEROUS TO MENTION!

YOU CAN'T AFFORD TO MISS THIS GIGANTIC LIQUIDATION SALE!

SALE STARTS FRIDAY,
APRIL 30th, AT 9:00 A.M.
AND LASTS UNTIL EVERYTHING IS SOLD!
EVERYTHING MUST GO!
NOT A SINGLE GARMENT
HELD BACK!



casuals "ON THE DRAG"

2346 GUADALUPE

ALL SALES FINAL! NO EXCHANGES—NO REFUNDS

LIQUIDATION SALE **LIQUIDATION SALE**

The Austin Statesman (1921-1973); 29 Apr 1965: A10.



OFF TO CAMP—It's a happy load of youngsters who are ready to take a bus trip for a four-day stay at the Kiwanis Children's Camp at Mason. These 30 children will be knee deep in summer camping activities for the rest of this week,

thanks to Austin Kiwanis Clubs. Taking care of the youths are, left to right, Herman McKinney, Ervin Hinds and Harry Gordon. The camp is operated by the Texas-Oklahoma district of Kiwanis International.

American-Statesman/UPI

OFF TO CAMP. The Austin Statesman (1921-1973); 10 Aug 1965: 21.



PAID IN FULL—Don Legge, left, chairman of the Austin Kiwanis Club's Boys and Girls Work Committee, presents a check for \$1,125 to Herman E. McKinney, right, executive director of the Texas-O-

klahoma Kiwanis Children's Camp Foundation. The money pays for enrollment of 75 boys from the Austin area recruited by Harry Gordon, center, public relations chairman.

American-Statesman/UPI

PAID IN FULL. The Austin Statesman (1921-1973); 24 May 1967: 30.

Enfield Road residents won in their opposition to a drive-in grocery at the northwest corner of Enfield and Exposition. Attorney John B. Selman withdrew the application of Herman McKinney. Leonard Franklin for R. H.

Five Planning Commission Members Leave on June 1. CHRIS WHITCRAFT Staff Writer. The Austin Statesman (1921-1973); 09 Apr 1969: A17.

McKinney Goes Free On Bond

Herman E. McKinney, former chief of the tax department of the Texas Employment Commission, was booked into county jail Friday morning and released immediately after posting \$2,500 bond.

Indicted Thursday by Travis County grand jury for misapplication of almost \$50,000, McKinney was brought to the sheriff's office by his attorney Frank Maloney.

The case will be called for designation of attorneys next Thursday, according to Dist. Attorney Bob Smith. Arraignment will be called two weeks later. If McKinney enters a not guilty plea, a jury trial will be set at the arraignment.

McKinney, of 1517 Forest Trail, submitted his resignation from the TEC and a cashier's check for \$91,702.06 to TEC Commissioner J. Ed Lyles on Feb. 28.

The indictment returned Thursday in 147th District Court concerned a \$47,705.96 check supposedly drawn from an account of Stone and Webster Engineering Co. of Boston, Mass.

The indictment says in part that McKinney did "unlawfully and fraudulently with the intent to take, misapply and convert the said check and proceeds thereof to his own use, in that he did then and there deposit said check in an account in the Capital National Bank of Austin, Texas."

A statement issued Thursday by TEC Commissioners Mrs. Nancy Sayers, Lyles and Sherman Birdwell said that Lyles accepted the \$91,000 check on Feb. 28, but refused to accept McKinney's resignation, telling him to report back to the Commission Monday (March 3) so the entire Commission could take action on the matter.

McKinney's resignation was (See FUNDS, Page 6)

accepted effective Feb. 28 during the Monday meeting with Commissioners Lyles and Birdwell, the statement said.

Investigation by the two commissioners showed that \$91,702 of tax contribution payments in the form of checks had been converted, the statement said. Commission records were altered to show a credit due employers for taxes due under the Unemployment Compensation Act, the statement said.

Mrs. Sayers, the statement said, immediately notified the Attorney General, who in turn gave the information to Travis County District Attorney Bob Smith.

"The District Attorney requested that the commission make no public statement on the matter until an investigation had been completed and the grand jury had been given an opportunity to consider it," the statement said.

Attorney General Crawford Martin issued a statement Thursday saying he had received the information and turned it over to the Travis County District Attorney who has exclusive jurisdiction in such cases.

Martin's statement also said: "Beginning on April 10, 1969, the office of the Attorney General immediately began an investigation to ascertain the extent of the alleged misappropriation. This investigation is still continuing, with the complete cooperation of the Texas Employment Commission, and if a loss is shown, a civil suit will be filed."

McKinney Goes Free On Bond. The Austin Statesman (1921-1973); 13 June 1969: 1

Former Tax Chief Booked

Herman E. McKinney, former chief of the tax department of the Texas Employment Commission, was booked into county jail Friday morning and released immediately after posting \$2,500 bond.

McKinney, who was indicted Thursday by Travis County Grand Jury for misapplication of almost \$50,000, was surrendered to the sheriff's office by his attorney, Frank Maloney.

Dist. Attorney Bob Smith said the case will be called for designation of attorneys next Thursday. Arraignment will be called two weeks later. If McKinney enters a not guilty plea, a jury trial will be set at the arraignment.

McKinney, of 1517 Forrest Trail, submitted his resignation from the TEC and a cashier's check for \$91,702.06 to TEC Commissioner J. E. Lyles on Feb. 28.

The indictment returned Thursday in 147th District Court concerned a \$47,075.96 check supposedly drawn from an account of Stone and Webster Engineering Co. of Boston, Mass.

The indictment says in part that McKinney did "unlawfully and fraudulently with the intent to take, misapply and convert the said check and proceeds thereof to his own use. . ."

Former Tax Chief Booked. The Austin Statesman (1921-1973); 14 June 1969: 9.

By GLEN CASTLEBURY
and GEORGE KUEMPEL
The Texas Employment Commission is leaving no stone unturned in reassessing its money handling procedures in wake of the indictment of the agency's veteran tax chief for embezzlement.

Those conducting the probe into procedures are questioning every step from the mail room to the bank.

The three commissioners found out about the **Herman McKinney** case in late February when McKinney offered to make restitution of \$91,000.

But the commissioners' hands were tied until earlier this month when the indictment was made public.

One source in the thick of the investigation says that the agency is "naturally concerned" as to whether anyone else was involved in the McKinney case. So far there is no indication that

anyone else was.

In the course of the probe of procedures, most of the wheels at the commission have been asked if they would willingly submit to polygraph tests. Reportedly everyone asked agreed, but no tests have been given and none is planned.

The commissioners now

have on their desks a report with 20 pages of recommendations from an intra-agency study committee appointed after the McKinney indictment.

The report deals with procedures in virtually every aspect of the commission. Commissioners are expected to start taking the report apart this week to see what recommendations should be implemented.

Tom Pendleton, formerly tax division field chief, has been named acting head of the division. He will be an important figure in any revamping of procedures, along with Bill O'Brien, the head cashier.

A simple index of the procedural problem at the TEC is the fact that the agency receives some 900,000 quarterly tax reports from employers — all coming in the last two or three days of the quarter.

That represents a lot of money to be coordinated between the mail room, tax department, data processing, cashier, and whatever other departments might be involved.

CAPITOL. CASTLEBURY, GLEN; Kuempel, George. The Austin Statesman (1921-1973); 29 June 1969: A29.

pg. A1

McKinney

Pleads Innocent

Herman E. McKinney, former chief of the tax department of the Texas Employment Commission, pleaded innocent Thursday to charges of misapplication of public funds.

McKinney appeared before Dist. Judge Mace B. Thurman Jr. who set a jury trial for Oct. 20.

The former public official was indicted June 12 by the Travis County grand jury for allegedly misapplying \$47,705.96 in public funds. The indictment concerned a check for that amount supposedly drawn from an account of Stone and Webster Engineering Co. of Boston, Mass.

The charge says in part that McKinney did "unlawfully and fraudulently with the intent to take, misapply and convert said check and proceeds thereof to his own use. . ."

The grand jury indictment charged that in June of 1966 McKinney deposited the check (See PLEADS, Page 6)

● PLEADS

(Continued from Page 1)

in his own account at the Capital National Bank in Austin.

McKinney, of 1517 Forrest Trail, submitted his resignation from the TEC and a cashier's check for \$91,702.06 to TEC commissioner L. E. Lyles on Feb. 28, of this year.

McKinney appeared in 147th District Court Thursday morning with his attorney Frank Maloney. District Attorney Bob Smith said that he and Maloney had requested the October trial date because they would be busy in the intervening months with the Clyde Durbin Jr. murder trial.

Maloney is also defending Durbin whose pre-trial hearings start Monday in Austin.

Charge Filed In Dope Case

A 29-year-old Austin man was released from Travis County Jail Friday afternoon on \$1,000 bond after his early morning arrest for possession of marijuana.

Daniel Campbell Richmond of 2702 Enfield was arrested around 2 a.m. Friday by officers executing a search warrant issued by Justice of the Peace Bob Kuhn after the man had been questioned by police in connection with a shooting near Enfield and Exposition Blvd.

The man was charged by Judge Kuhn who also set bond in the case.

Police said a man identified as Chester L. Kalinowska, 18, of 1708-B 5th St., had been taken to Brackenridge Hospital with a bullet wound in his left leg.

Police said they stopped the man when he was spotted limping in a vacant lot near the intersection around 12:30 a.m. Blood was seen seeping through Kalinowska's trousers as officers questioned him.

Kalinowska told police he was shot as he ran from the living room of a residence on Enfield Road.

He had been taken to the residence by Richmond, he said, who had given him a ride from the 1900 block of Brazos.

Homicide detectives said that no charges would be filed in connection with the shooting.

McKinney Pleads Innocent. *The Austin Statesman* (1921-1973); 10 July 1969: A1.

The Austin Statesman (1921-1973); 10 Oct 1970: 6.

Zoning cases

New Applications

H.E. and Mary McKinney (by H. Brown Shufield) — 2702 Enfield — from A 1st to O 1st. West Austin Neighborhood Group

Enfield Lane — recommended O.C. with right-of-way.

H.E. and Mary McKinney (by H. Brown Shufield) — 2702 Enfield — not recommended for O.

Planned Unit Development

The Austin American Statesman (1973-1980), Evening ed.; 27 July 1978: 7 and 31 Aug 1978: 7.

Mary Joseph McKinney, 93, a lifelong Austin resident, passed away on Thursday, February 19, 1997. Mrs. McKinney was born on September 18, 1903, in Austin, Texas, where she attended St. Mary's Academy and the University of Texas. She and Herman Edwin McKinney were wed in 1939. He preceded her in death in 1990. She was the owner of Mary McKinney Casuals on 6th Street. She later moved her business to Guadalupe near the campus. She retired in 1968. She was an active member of St. Mary's Catholic Church and was associated with the Southern Federation of American Lebanese Association. Mrs. McKinney is survived by her daughter, Dawn Clarke and her son-in-law, Donald D. Clarke; granddaughter, Sarah; and grandson, Brian of Arlington, Virginia; her sister, Margaret Joseph; and a dear niece, Laura Mings Joseph, both of Austin; and many other loving relatives and friends. The rosary will be recited at 5:00 p.m., Friday evening in the Colonial Chapel of Cook-Walden Funeral Home. Mass of Christian Burial will be celebrated at 10:00 a.m. Saturday at St. Mary's Catholic Church, with Reverend Harold Zink officiating. Entombment will follow in the Mausoleum of Assumption Cemetery. For those desiring memorial contributions may be made to Family Hospice of Austin.

Obituary. *Newspapers.com*, 1997. <https://www.newspapers.com/newspage/357115069/>

Case
Preview**McKinney v. United States**

Innocently enough, *United States v. Lewis* dealt with a taxpayer forced to repay a portion of a bonus. Today, a similarly situated taxpayer could handily escape negative tax consequence by invoking § 1341. Can the same be said of someone forced to repay money they embezzle? We know as a matter of elementary tax law that illegal income is includible in gross income, but what ramifications flow from that reality? If the taxpayer must include embezzled funds in income, can she legitimately claim that she apparently had an unrestricted (albeit potentially temporary) right to the money? An affirmative answer would appear to make the protections of § 1341 available to her at the time she is forced to repay the funds. The Fifth Circuit Court of Appeals took up this issue in *McKinney v. United States*. Consider the following questions as you read the opinion:

McKinney v. United States
574 F.2d 1240 (5th Cir. 1978)

TUTTLE, Circuit Judge

The taxpayer, Herman E. McKinney, having embezzled the sum of \$91,702.06 from his employer, reported and paid taxes on the fund in 1966. He refunded the entire amount in 1969 and now seeks to be made whole tax-wise under the terms of a special statutory relief provision of the Internal Revenue Code, [section 1341].

Post-Case
Follow-Up

In this case, the Fifth Circuit Court of Appeals rejected the notion that embezzled funds includible in gross income are held by the embezzler under a claim of right. Given that § 1341 applies only to those holding original funds under the belief that they have an unrestricted right to them, the court rationally concluded that § 1341 does not apply to embezzlers forced to repay stolen funds. Under the facts of this case, the embezzler apparently found himself in a tax environment in which application of § 1341 would have offered measurable benefits. Even though the court deprived him of § 1341's protections, the facts of the case do bring to light an oddity (assuming § 1341 applies in a specific situation). Having been required to include income in gross income in a prior period, a given taxpayer might find himself able to take a deduction (on repayment of the funds) in a later period in which tax rates have *increased* substantially (i.e., they get the benefit of a current deduction even if a tax credit would yield a lesser benefit). Add to that the fact that the taxpayer is also spared fines, penalties, and prison time.

Real Life Applications: McKinney v. United States

Dexter, Bobby L. *Federal Income Taxation in Focus*.

https://books.google.com/books?id=Q_ZbEAAAQBAJ&dq=%22herman+e+mckinney%22+case+tax&source=gbs_navlinks_s

Permits

WATER SERVICE PERMIT Austin, Texas		Nº 106753
Received of	H. E. McKinney	INDEXED
Address	2702 Enfield Rd.	Date
Amount	Two and 50/100 - - - -	\$ 2.50
Plumber	North	Size of Tap
Date of Connection	7-15-38	
OWNER	H. E. Mc Kenny	ADDRESS
PLAT	144	LOT
SUBDIVISION	Westenfield	BLK
OCCUPANCY	Acc bldg. (dog house)	
BLD PERMIT #	115236	DATE
CONTRACTOR	owner	OWNERS
WATER TAP REC #	Exist	ESTIMATE
SEWER TAP REC #	Exist	
Frm acc bldg.		
96 sq. ft.		