



TEXAS ETHICS COMMISSION



****Overruled, Modified, Clarified, or Superseded****

ETHICS ADVISORY OPINION NO. 319

April 19, 1996

Whether a legislator may use political contributions to pay rent and maintenance fees for a condominium in Travis County that the legislator's wife owns as separate property. (AOR-350)

The Texas Ethics Commission has been asked whether a legislator may use political contributions to pay rent and maintenance fees for a condominium in Travis County that the legislator's wife owns as separate property. There are two issues presented by that question: whether such payments constitute a conversion of political contributions to personal use in violation of section 253.035 of the Election Code and whether such payments constitute a use of political contributions to purchase real estate in violation of section 253.038 of the Election Code.

Although a legislator may not convert political contributions to personal use, a legislator who does not ordinarily reside in Travis County may use political contributions to pay "reasonable housing or household expenses incurred in maintaining a residence in Travis County." Elec. Code § 253.035(a), (d)(1). Such payments are reportable officeholder expenditures. *See id.* §§ 251.001(9), 254.031(3), (6). The question here is whether such payments are permissible even if made to a legislator's spouse.

The Ethics Commission has stated that a candidate or officeholder may use political contributions to reimburse himself for the use of personal assets for campaign or officeholder purposes. [Ethics Advisory Opinions Nos. 129, 116](#) (1993). Similarly, it is permissible for a candidate or officeholder to use political contributions to pay a family member for the use of the family member's assets for campaign or officeholder purposes. Any such reimbursement should be based on the fair market value of the use of an asset. A conversion of political contributions to personal use would occur if a legislator paid his spouse more than fair market value for the use of her real property for officeholder purposes.

Although the personal-use restriction in section 253.035 of the Election Code does not prohibit a legislator from using political contributions to pay his spouse fair market value for the use of the spouse's assets for officeholder purposes, it has been suggested that the payments at issue here are prohibited under section 253.038 of the Election Code, which prohibits the use of political contributions to *purchase* real property or to pay the interest on or principal of a note for the *purchase* of real estate.¹

The real property in question here is the separate property of the legislator's spouse. In Texas a married person has the sole management, disposition, and control over his or her separate property. Tex. Const. art. XVI, § 15; Fam. Code § 5.21. A man who pays rent to his spouse for the use of real property does not thereby acquire or "purchase" an interest in that property. Consequently, a legislator's use of political contributions to make a rental payment to his spouse for the use of her separate rental property does not constitute a payment to purchase real property and does not violate section 253.038 of the Election Code.²

SUMMARY

A legislator's use of political contributions to make a rental payment to his spouse for the use of her separate property does not constitute a payment to purchase real property and does not violate section 253.038 of the Election Code. Nor is such a payment a conversion to personal use as long as the payment does not exceed the fair market value of the use of the property.

¹ The prohibition on the use of political contributions to purchase real property or to make payments on a note for the purchase of real property does not apply to a payment made in connection with real property purchased before January 1, 1992.

² In the absence of an agreement to the contrary, income from separate property is community property. Tex. Const. Art. XVI, § 15. Although in this case the legislator may have a community interest in the rent payments, the legislator does not acquire an interest in the real property by virtue of those payments.