

**SUBJECT:** Restricting political contributions used for rental of certain real property

**COMMITTEE:** Elections — committee substitute recommended

**VOTE:** 6 ayes — Berman, Bohac, England, Anchia, Burnam, Farias  
1 nay — C. Howard

**WITNESSES:** For — (*Registered, but did not testify:* Ken Bailey, Texas Democratic Party; Maxine Barkan, League of Women Voters of Texas; Teri Sperry True Courage Action Network)  
Against — None  
On — (*Registered, but did not testify:* David Reisman, Texas Ethics Commission)

**BACKGROUND:** Election Code, sec. 253.038 states that a candidate or officeholder or a specific-purpose committee for supporting, opposing, or assisting the candidate or officeholder may not knowingly make or authorize a payment from a political contribution to purchase real property or to pay interest or principal of a note for the purchase of the real property. A person who violates the provision commits a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000). The section does not apply to a payment in connection with real property bought before January 1, 1992.

Section, 253.035(a) states that a person who accepts a political contribution as a candidate or officeholder may not convert the contribution to personal use. “Personal use” means a use that primarily furthers individual or family purposes not connected with the performance of duties as a candidate for or holder of a public office. It does not include payments to defray ordinary and necessary expenses incurred for activities as a candidate or for the performance of duties or activities as a public officeholder, including payment of rent, utilities, and other reasonable housing or household expenses connected with maintaining a residence in Travis County by members of the Legislature who do not ordinarily reside there, excluding payments prohibited under sec. 253.038. Such payments are reportable officeholder expenses pursuant to sec. 254.031(3) and (6).

The Texas Ethics Commission (TEC) issued Ethics Advisory Opinion No. 319 on April 19, 1996. It concluded that a legislator's use of political contributions to make a rental payment to the member's spouse for the use of the spouse's separate property does not constitute a payment to purchase real property and does not violate sec. 253.038, 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.

A person related within the second degree of consanguinity includes the person's blood-related parent, child (first degree), brother, sister, grandparent, or grandchild (second degree). Those related within the second degree by affinity are the person's relatives by marriage, including stepparent, stepchild, mother-in-law, father-in-law, son-in-law, daughter-in-law (first degree), brother-in-law, sister-in-law, grandparent of spouse, spouse of grandparent, grandchild of spouse, or spouse of grandchild (second degree).

**DIGEST:**

CSHB 3066 would add sec. 253.038(a-1) to the Election Code to specify that a candidate or officeholder or a specific-purpose committee for supporting, opposing, or assisting the candidate or officeholder could not knowingly make or authorize a payment from a political contribution for the rental of real property from:

- a person related within the second degree by consanguinity or affinity to the candidate or officeholder; or
- a business in which the candidate, officeholder, or a relative described above had a participating interest of more than 10 percent, held a position on the governing body, or served as an officer.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2007. It would apply to a payment made from political contributions on or after the effective date without regard to whether the payment was made under a lease or other agreement entered into before the effective date.

**SUPPORTERS  
SAY:**

HB 3066 would clarify ethics law enacted more than 15 years ago and interpreted in Ethics Advisory Opinion No. 319 on payment of rent with campaign funds to spouses for the use of the spouse's separate property. The bill would prohibit candidates and officeholders from using campaign

funds to pay rent on housing or office space owned by close relatives or by businesses in which candidates, officeholders, or their close relatives had more than a 10 percent interest, a position on the governing body, or served as an officer. The clarification would follow TEC's *Recommendations for Statutory Changes*, issued in January 2007.

The custom of some candidates or lawmakers paying rent to spouses for real property that the spouses own in or near Austin began drawing increasing criticism and press scrutiny in the fall campaigns of 2006, although the practice has occurred for more than 10 years. While the payments have been deemed legal and appropriate, they are perceived by some as undermining the purpose of current law, which is to not allow people to profit from their campaign contributions or to purchase a residence with contributions.

CSHB 3066 would protect candidates and members of the Legislature, their spouses, and their families by more clearly defining the law at issue. While TEC affirmed the advisory opinion again this year, protecting the public's trust is more important. Otherwise, a perception could be created that candidates and officeholders were taking advantage of a technicality. This simple change in the law would affect very few lawmakers and would allow Texans to have more faith in the ethics of their political candidates and elected representatives. The provision in CSHB 3066 disallowing payments to a business in which the candidate, officeholder, or a close relative had more than a 10 percent interest, held a position on the governing board, or served as an officer would further the intended purpose of protecting public confidence.

OPPONENTS  
SAY:

It would be overreaching to prohibit a candidate or officeholder from knowingly making or authorizing a rental payment to a business in which the person or the person's relative had more than a 10 percent interest. This would amount to criminalizing payments for office space rental with campaign funds to a corporation in which the candidate, officeholder, or close relative had a minor interest or held a position on the governing board.

Legislators paying rent with political contributions to a spouse for the use of the spouse's separate property, as long as the payments do not exceed fair market value, is not a violation of the law or the guidelines set forth in Ethics Advisory Opinion No. 319. Government Code, sec. 571.097 states that it is a defense to prosecution or to the imposition of a civil penalty

that a person reasonably relied on a written TEC advisory opinion relating to the provision the person was alleged to have violated.