

**CAUSE NO. 324-437757-08**

**TOBY GOODMAN**

**v.**

**TEXAS ETHICS COMMISSION**

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§

**IN THE DISTRICT COURT**

**324th JUDICIAL DISTRICT**

**TARRANT COUNTY, TEXAS**

**FINAL SUMMARY JUDGMENT**

On February 25th, 2009, the Court heard the motion for summary judgment filed in this cause by Toby Goodman ("Goodman"), Petitioner. The Court, after examining the pleadings timely filed, the motion for summary judgment, the response filed by the Texas Ethics Commission ("TEC"), Goodman's reply, and the summary judgment evidence admitted for consideration, determined that Goodman is entitled to summary judgment as follows:

IT IS ORDERED that Goodman did not violate §§ 253.035 and 253.038 of the Texas Election Code, and that the TEC's Final Order dated February 12, 2008 is hereby set aside. **RC**

~~IT IS FURTHER ORDERED that all costs of court be taxed against the TEC.~~

All relief request in this case and not expressly granted is denied. This judgment finally disposes of all parties and claims and is appealable.

SIGNED on FEB. 26, 2009.

  
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JUDGE PRESIDING



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February 26, 2009

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Re: 324-437757-08; Toby Goodman versus Texas Ethics Commission

Dear Counsel:

After a review of the pleadings and summary judgment evidence presented in connection with the motion for summary judgment that was heard on February 25, 2009, and after reviewing the applicable law and opinions from the Texas Ethics Commissions, the Court makes the following findings and rulings:

1. The question before this Court is whether or not Representative Goodman violated §253.035 and §253.038 of the Texas Election Code by making payments from political contributions to pay rental on real estate owned by Representative Goodman's wife as her separate property when Representative Goodman remained liable on an underlying indebtedness on those properties and whether Representative Goodman could reasonably rely on Ethics Advisory Opinion No.319 as a defense to any claim that such payment from political contributions was in violation of the above referenced sections of the election code.
2. At all relevant times, the two pieces of real estate involved were held by Representative Goodman's wife as her sole and separate property. No claim was raised that the transactions that led to the transfer of the property to Ms. Goodman

- as her separate property were fraudulent or sham transactions and no summary judgment proof was presented with regard to any such claim.
3. The uncontroverted summary judgment proof presented was that fair market rental value had been paid for the subject properties and no summary judgment evidence was presented that indicated any of the payments exceeded fair market value.
  4. Ethics Advisory Opinion No. 319 specifically states that a legislator does not violate §253.035 or §253.038 of the election code by making rental payments from political contributions for real estate held by the legislator's wife as her separate property. The only exception stated in the opinion was if the payments made to the spouse were more than fair market rental value for the use of the property for office holder purposes.
  5. There was no summary judgment evidence produced that indicated that any of the rental payments or fees were paid to reduce either of the underlying indebtednesses on the subject properties.

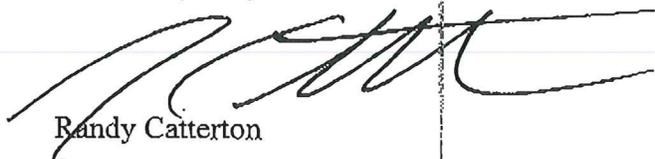
Based upon the above findings, the Court rules as a matter of law, that Representative Goodman did reasonably rely upon Ethics Advisory Opinion No. 319 and that said reliance is a defense to the alleged violations of §253.035 and §253.038 of the election code.

In this case, there is no dispute that the properties were the separate property of Ms. Goodman. There is no dispute that the rental payments were within the fair market value for the properties. There is no dispute that Representative Goodman's primary residence was Tarrant County, Texas at all relevant times.

The Commission has argued that because the rental payments may constitute community property of Representative and Ms. Goodman and could have been used to reduce the underlying mortgage indebtedness on the properties, that this case is distinguishable from the case in Ethics Advisory Opinion No. 319. As stated above, there was no summary judgment evidence that any of the rental payments were used for reduction of the mortgage indebtednesses on the properties. In addition, the commission considered the community property character of the rental payments in Ethics Advisory Opinion No. 319 and, as also stated above, ruled that such payments did not violate §253.035 and §253.038 of the election code.

It is the ruling of this Court that Representative Goodman's motion for summary judgment is granted. A copy of the final summary judgment is attached hereto.

Yours very truly,



Randy Catterton

**ATTACHMENT**