

SUBJECT: Jurisdiction in Travis County for charitable trust suits brought by OAG

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

VOTE: 7 ayes — Jackson, Lewis, Bohac, S. Davis, Raymond, Scott, Woolley

0 nays

4 absent — Castro, Hartnett, Madden, Thompson

SENATE VOTE: On final passage, March 28 — 31-0

WITNESSES: (*On House companion bill, HB 810:*)

For — None

Against — None

On — (*Registered, but did not testify:* Mary Henderson, Office of the Attorney General of Texas)

BACKGROUND: Property Code, ch. 123 provides that in the interest of the general public, , the Office of the Attorney General (OAG) is a proper party and may intervene in a legal proceeding involving a charitable trust.

The venue for a suit refers to where a suit may be brought, whereas the jurisdiction of a court refers to what types of cases a court may consider. Property Code, ch. 123 requires that venue for the OAG's proceedings alleging breach of fiduciary duty by a charitable entity be a court of competent jurisdiction in Travis County or the county where the defendant resides. The appropriate jurisdiction established by the Texas Probate Code, sec. 4A, for probate proceedings, however, is the probate court that exercised original probate jurisdiction, which could be anywhere in the state.

DIGEST: SB 587 would amend Property Code, sec. 123.005 to allow a statutory probate court of Travis County to have concurrent jurisdiction with a court on which jurisdiction was conferred by sec. 4A of the Texas Probate Code in a proceeding brought by the OAG alleging breach of a fiduciary duty

with respect to a charitable trust created by a will that had been admitted to probate.

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, 2011. The bill would apply only to a proceeding commenced on or after the effective date.

**SUPPORTERS
SAY:**

SB 587 would fix the current conflict in the statute between venue and jurisdiction by clearly allowing the OAG to file a claim for breach of fiduciary duty in a statutory probate court in Travis County, even if the will originally was probated somewhere else. SB 587 would save the state money because travel to the original probate courts for these proceedings no longer would be necessary.

The OAG protects the assets of charitable trusts for the benefit of the public. Many charitable trusts are created when someone dies and leaves assets for the benefit of a charitable trust. Unfortunately, some trustees abuse their fiduciary duty to use the money only for charitable purposes by, for example, paying themselves excessively high fees or misappropriating trust assets. On behalf of the public, the OAG must file suit to protect those assets.

SB 587 would create a very narrow exception to the probate court jurisdiction rules by allowing the OAG to choose the Travis County statutory probate court only when the OAG was alleging breach of a fiduciary duty with respect to a charitable trust created by a will that had already had been admitted to probate. The Legislature clearly intended to allow the OAG to make this jurisdiction choice, as evidenced by the OAG's ability to choose venue in Travis County under the same narrow circumstances.

The original court that probates a will often has little expertise regarding breach of fiduciary duty charitable trust cases and, if in a small town, is possibly familiar with the trustee being sued. The case likely would be removed to a district court anyway, so starting anew with a statutory probate court in Travis County would not be removing the case from a court familiar with the charitable trust.

OPPONENTS
SAY:

Removing a case involving a charitable trust created by a will from the court where the will was originally probated, as SB 587 would do, would take it from a court that already had an understanding of the charitable trust involved. It also could cause hardship to the witnesses, who likely would live near the court of original jurisdiction, because they would have to travel to Austin to be part of the proceedings.

NOTES:

The House companion bill, HB 810 by Darby, was considered in public hearing by the House Judiciary and Civil Jurisprudence Committee on March 28 and was left pending.