



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 12

June 4, 1992

Legality of a legislator accepting a hunting trip paid for by a lobbyist and legality of a lobbyist providing a hunting trip to a legislator. (AOR-5)

The Texas Ethics Commission has been asked to consider whether a legislator may participate in hunting trips under various circumstances. In addition to questions about the legislator's acceptance, the request raises the question of whether a person required to register as a lobbyist may provide a legislator a place to hunt and meals, transportation, and lodging in connection with the hunting trip.¹

A person or organization required to register as a lobbyist is prohibited from paying for transportation and lodging² for legislators except in connection with conferences, fact-finding trips, and similar events. Gov't Code §§ 305.024(a)(3), 305.025(3), (4). Similarly, a legislator is prohibited from accepting transportation or lodging from a lobbyist except in connection with such events. *Id.* §§ 305.024(b), 305.025(3), (4). Therefore, a person or organization required to register as a lobbyist may not pay or provide for transportation and lodging expenses for a legislator in connection with a hunting trip, and a legislator may not accept the payment of expenses for the provision of transportation or lodging from a person required to register as a lobbyist.

The lobby statute contains no such general prohibition in regard to a place to hunt or meals. A lobbyist is required to report the value of a place to hunt as an expenditure made for entertainment. Gov't Code § 305.006(b). A lobbyist's expenditures for entertainment for an individual member of the legislature may not exceed \$500 in a calendar year. *Id.* § 305.024(a)(4). A legislator may not accept expenditures made in violation of that provision. *Id.* § 305.024(b). Further, a person required to register as a lobbyist may not make and a legislator may not accept an expenditure for food and beverages or for entertainment unless the person required to register as a lobbyist is present. *Id.* §§ 305.006(f), 305.024(a)(7), (b). Also, a lobbyist would have to report the value of the food and entertainment. *Id.* § 305.006(b). If the meals cost more than \$50 each day,³ the lobbyist would have to provide the name of the legislator who was benefitted, the place and date of the expense, and the amount that was expended. *Id.* § 305.0061(b). The legislator would not be required to report such expenditures on his or her annual financial disclosure statement. V.T.C.S. art. 6252-9b, § 4(c)(7)(C).

Other relevant law is found in chapter 36 of the Penal Code. Under section 36.08(f) of the Penal Code a member of the legislature "commits an offense if he solicits, accepts, or agrees to accept any benefit from any person." *See* Penal Code § 36.09 (making it an offense to offer a public servant a benefit that the offeror knows the public servant is prohibited from accepting). For purposes of chapter 36 of the Penal Code, "benefit" is defined as

anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct and substantial interest.

Id. § 36.01(5).⁴ Even if transportation, lodging, entertainment, and food are benefits for purposes of the Penal Code, the general prohibition on the acceptance of benefits by a legislator would not apply to food and entertainment (or transportation and lodging) accepted as a "guest."⁵ *Id.* § 36.10(b).

This raises the question of the meaning of the word "guest" in this context. The language of another exception provides guidance as to the meaning of the word "guest." The general prohibition against acceptance of benefits is inapplicable to gifts or other benefits "conferred on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient." Penal Code § 36.10(a)(2). That exception would cover many situations in which one would typically receive food and entertainment as a "guest." Therefore, we assume that "guest" means something different from the special relationships of subsection (a)(2), and the term "guest" must have some limiting effect. Otherwise, the "guest" exception would be an across-the-board exception for food and entertainment (and transportation and lodging), in which case inclusion of the term "guest" in the exception would be pointless. We conclude, therefore, that for a legislator to accept food and entertainment as a "guest" under section 36.10(b) of the Penal Code the person providing the food and entertainment must accompany the guest.⁶ This limitation also would provide some symmetry since, under this interpretation, acceptance of food and entertainment is permissible under sections 36.08 and 36.09 of the Penal Code in the same circumstances that expenditures for food and entertainment are permissible under the lobby statute. *See generally* note 4.

SUMMARY

A person required to register as a lobbyist may not provide, and a legislator may not accept from a person required to register as a lobbyist, transportation and lodging in connection with a hunting trip. Subject to certain monetary limitations and reporting requirements, a lobbyist may provide, and a legislator may accept, food in connection with a hunting trip and a place to hunt. A legislator may accept food in connection with a hunting trip and the provision of a place to hunt if the person providing such food and entertainment is present.

¹ All three hunting trips are provided by organizations rather than by natural persons. Although the requestor describes only one of the organizations providing a hunting trip as a lobbyist, any organization or a person acting on behalf of the organization would be required to register as a lobbyist under chapter 305 of the Government Code if the hunting trip is a communication to influence legislative action and the person otherwise meets the threshold requirements for registration as a lobbyist. *See generally* Gov't Code § 305.003 (persons required to register as lobbyists).

² The requestor describes one example in which lodging is in a "bunkhouse" on the hunting grounds. The lobby statute applies to any lodging, including a bunkhouse.

³ We assume that the provision of a place to hunt would cost more than \$50 a day.

⁴ Chapter 36 sets out prohibitions against bribery and against acceptance of benefits. "Benefit" is a critical term for purposes of both prohibitions. It has been suggested that an expenditure that is permissible either to make or accept under chapter 305 is, ipso facto, not a benefit under chapter 36 of the Penal Code. It is not necessary for the commission to address this issue in this opinion because we conclude that the expenditures in question are permissible under sections 36.08, 36.09, and 36.10 of the Penal Code, and we presume that the expenditures are not a bribe. *See* Penal Code § 36.02 (bribery).

⁵ Section 36.10(b) of the Penal Code provides:

Section 36.08 (Gift to Public Servant) of this code does not apply to food, lodging, transportation, or entertainment accepted as a guest and, if the donee is required by law to report those items, reported by the donee in accordance with that law. In the case of a legislator accepting food and entertainment from a lobbyist, there is no reporting requirement for the legislator. Although members of the legislature must file an annual financial disclosure statement, these items are not required to be reported on those annual statements. *See* V.T.C.S. art. 6252-9b, § 4(c)(11).

⁶ Section 36.08(f) prohibits both the acceptance and the solicitation of benefits. The exception set out in section 36.10(b), however, applies only to acceptance of benefits.