



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 17

June 4, 1992

Whether a legislator may accept a fee for a speaking engagement and accept reimbursement for travel, food, and lodging in connection with the event. (AOR-25)

The Texas Ethics Commission has been asked to consider whether a legislator may accept a fee for speaking to a group of people and also whether the legislator may accept reimbursement for travel, food, and lodging. The legislator has been asked to speak in his capacity as a state legislator.

Section 36.07 of the Penal Code provides as follows:

- (a) A public servant commits an offense if the public servant solicits, accepts, or agrees to accept an honorarium in consideration for services that the public servant would not have been requested to provide but for the public servant's official position or duties.
- (b) This section does not prohibit a public servant from accepting transportation and lodging expenses permitted under Section 305.025(b)(2), Government Code, in connection with a conference or similar event or from accepting meals in connection with such an event.
- (c) An offense under this section is a Class A misdemeanor.

A member of the legislature is a public servant for purposes of the Penal Code. Penal Code § 1.07(a)(30). Therefore, a legislator may not accept an "honorarium in consideration for" services that would not have been requested but for the legislator's official position or duties. *Id.* § 36.07(a). Payment in consideration for a speech is within the prohibition. *See* Attorney General Opinion MW-90 (1979) (equating the terms "honorarium" and "speaker's fee"). *See generally* Attorney General Opinion H-551 (1975) (whether legislators are prohibited from accepting certain honorariums under the Penal Code). Thus section 36.07(a) prohibits a member of the legislature, acting in his capacity as a member of the legislature, from accepting a speaker's fee.

The next question is whether a legislator may accept reimbursement for his expenses for travel and lodging in connection with such a speaking engagement. We note first that although subsection (b) of section 36.07 refers to subsection (b)(2) of section 305.025 of the Government Code, there is no such subsection. The subject matter makes clear that the reference was meant to be to subsection (4) of section 305.025. Thus, under the Penal Code, a legislator may accept expenditures for transportation and lodging if such expenditures are permitted by section 305.025(4) of the Government Code.

Section 305.024(a)(3) of the Government Code generally prohibits lobbyists from making expenditures for transportation and lodging. Subsection (4) of section 305.025 sets out an exception to that prohibition for

necessary expenditures for transportation and lodging provided in connection with a conference or similar event in which the member [of the executive or legislative branch] renders services, such as addressing an audience or engaging in a seminar, to the extent that those services are more than merely perfunctory.

Because the Penal Code allows a legislator to accept payment of expenditures permitted by that section of the lobby statute,¹ a legislator may accept the direct provision of or reimbursement for expenses for transportation and lodging incurred in connection with a speaking engagement at a "conference or similar event."

The final question is whether a legislator may accept reimbursement for meals in connection with such an engagement. Section 36.07(b) of the Penal Code states that a legislator is not prohibited from "accepting meals" in connection with such an engagement. We think this language permits not only the provision of meals but also the acceptance of reimbursement for actual expenses for meals.

A legislator may be required to report the acceptance of transportation, lodging, and meals in connection with a conference or similar event on his or her annual financial disclosure form. That form requires "identification of any person providing transportation, meals, or lodging expenses permitted under Section 36.07(b), Penal Code, and the amount of those expenses" unless the expenditures are required to be disclosed by a lobbyist. V.T.C.S. art. 6252-9b, § 4(c)(11). Under chapter 305 of the Government Code, lobbyists are required to disclose expenditures made to benefit legislators and other members of the legislative and executive branches. Therefore, if food, transportation, and lodging are provided to a legislator by a non-lobbyist, the legislator must disclose the value of these items and the names of the persons who provided them. If food, transportation, and lodging are provided by a lobbyist, the lobbyist must disclose this information.

SUMMARY

A legislator may not accept a fee for a speaking engagement that would not have been requested but for the legislator's official position or duties. A legislator may accept reimbursement for transportation and lodging expenses incurred in connection with a speaking engagement at a conference or similar event. At such an event a legislator may accept meals or reimbursement for actual expenses for meals.

¹ Technically, the only expenditures "permitted" by subsection (4) set out above are expenditures by lobbyists since section 305.025 is an exception to prohibitions that apply only to lobbyists. Standing alone, however, that subsection generally permits expenditures for transportation and lodging in connection with a conference or similar event. For purposes of section 36.07 of the Penal Code, we interpret the section to "permit" the described expenditures generally, not just by lobbyists, since it is unlikely that the legislature intended that lobbyists, but not non-lobbying groups, could pay the expenses a public servant incurs in connection with a conference or similar event. Any group or person paying the expenses of a public servant who is a member of the legislative or executive branch of state government should be aware, however, that payment of expenses made with an intent to influence legislation or administrative action may subject the payor to registration as a lobbyist under section 305.003(a)(1) of the Government Code.